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IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JESS MCDONALD,

Petitioner,

vs.

MARCEL YOUAKIM, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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April 16, 1996

QUESTION PRESENTED

Whether under the Due Process Clause of the Fourteenth Amendment, a State legislature may amend State law to alter or eliminate statutory social welfare benefits on a class-wide basis without first providing current recipients with individual due process determinations on their eligibility for different benefits they have not previously received.

LIST OF PARTIES

The parties to the proceedings below were petitioner Jess McDonald, Director of the Illinois Department of Children and Family Services ("DCFS" or the "Department"), sued in his official capacity. Respondents included Marcel Youakim and Linda Youakim, individually, and as foster parents, and Tim Robertson, and all others similarly situated.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner Jess McDonald, Director of the Illinois Department of Children and Family Services ("DCFS" or the "Department"), respectfully requests that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled proceeding on December 6, 1995.

OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 71 F.3d 1274 and is reprinted in the appendix hereto, infra p. 1a.

The opinion of the United States District Court for the Northern District of Illinois (Nordberg, J.) is unreported and is reprinted in the appendix hereto, infra p. 47a. The injunction entered by the district court on June 30, 1995, is unreported and is reprinted in the appendix hereto, infra p. 88a.

JURISDICTION

Respondents initiated this proceeding pursuant to Civil Rule 18 of the United States District Court for the Northern District of Illinois seeking an order adjudicating petitioner in civil contempt of the 1976 Judgment Order in Youakim v. Miller, No. 73 C 635 (N.D. Ill. Aug. 24, 1976) (the "Judgment Order") (reprinted in the appendix hereto at p. 90a), because of the enactment by the Illinois General Assembly of a new State law eliminating foster care payments to unlicensed foster homes. See Youakim v. Miller, 431 F. Supp. 40 (N.D. Ill. 1976) (memorandum opinion and order preceding Judgment Order), aff'd, 562 F.2d 483 (7th Cir. 1977), aff'd, 440 U.S. 125 (1979). Respondents also sought declaratory and injunctive relief, alleging that the new State law violated Title IV-E of the Social Security Act ("Title IV-E"), 42 U.S.C. §§ 670-76, and the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States.

The district court's jurisdiction was based on 28 U.S.C. §§ 1331, 1343, 2201, and 2202. The district court's jurisdiction was also based on Paragraph 12 of the Judgment Order, which provides for continuing jurisdiction, as well as the district court's

inherent power to enforce its orders under Civil Rule 18 of the Northern District of Illinois. The district court conducted an evidentiary hearing on June 15 and 16, 1995, and entered a preliminary injunction (the "injunction") on June 30, 1995, enjoining the operation of the new law as it applied to all current unlicensed foster homes caring for related children in State custody. (App. 88a.)

On June 30, 1995, petitioner filed a timely notice of appeal from the injunction order. Appellate jurisdiction was based on 28 U.S.C. § 1292(a)(1). On December 6, 1995, the Seventh Circuit affirmed the district court's injunction as modified. (App. 1a.) Petitioner filed a petition for rehearing with suggestion for rehearing en banc on December 15, 1995. On January 17, 1996, the Seventh Circuit denied that petition. (App. 45a.)

This Court's jurisdiction is based on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, as follows:

AMENDMENT XIV.

> Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

This case presents a critical and timely issue on the limits of the Due Process Clause when a State legislature acts to eliminate a State-created social welfare program. The Seventh Circuit below upheld an injunction preventing Illinois from implementing a statute eliminating State-created and State-funded foster care payments for unlicensed foster homes. Contrary to this Court's long-standing precedent, the Seventh Circuit concluded that the State must continue these foster care payments, even though the legislature had eliminated the program, until Illinois provided thousands of current unlicensed foster homes with individual determinations on whether they are eligible for payments under a separate foster care program for licensed homes. If left to stand, the Seventh Circuit ruling vastly broadens the meaning of the Due Process Clause and unduly intrudes upon the ability of State legislatures to alter or reform their own welfare programs.

The injunction was directed against Illinois' Public Act 89-21 ("P.A. 89-21"). P.A. 89-21 enacts the Home of Relative ("HMR") Reform Plan, a major legislative initiative to revise the regulation and use of relatives as foster parents for children

in DCFS custody. The statute, among other things, eliminated the State's program providing monthly foster care payments to unlicensed relative foster homes. (App. 9a-10a.) Prior to the passage of P.A. 89-21, Illinois was one of only two states in the nation that provided foster care payments to unlicensed foster homes at the same monthly payment rate as licensed foster homes. (App. 57a-58a.) These foster care payments were entirely State-created and State-funded, as the federal foster care program under Title IV-E provides federal funds only for licensed foster care. See 42 U.S.C. § 672(c). As noted by the district court, as of April 30, 1995, there were over 8,000 unlicensed relative homes receiving full foster care payments from Illinois.[1] (App. 55a-56a.) Under the terms of P.A. 89-21, as of July 1, 1995, foster care payments to unlicensed homes were eliminated, although relative caregivers could apply to

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[1] Title IV-E also provides federal funds for foster homes that are "approved." 42 U.S.C. § 672(c). Prior to the passage of P.A. 89-21, Illinois operated an "approval" program for relative foster homes. (App. 6a-7a.) This "approval" program was also eliminated under the HMR Reform, although a transition process was provided for "approved" relative homes to obtain licenses prior to a reduction in monthly payments. (App. 11a-12a.) As of April 30, 1995, there were approximately 5,000 "approved" relative foster homes. (App. 56a.) The district court held that the transition process for these approved homes was insufficient, and violated the terms of Title IV-E and the 1976 Judgment Order. The injunction imposed a new transition process for those "approved homes," and was upheld by the Seventh Circuit. (App. 22a-26a.) This petition does not challenge the Seventh Circuit's decision under Title IV-E and the Judgment Order with respect to these 5,000 "approved" homes.

become licensed and could receive licensed foster care payments if they met the applicable licensing standards.[2]

Respondents are relatives operating relative foster homes, and the children placed there by DCFS. Respondents challenged the enactment of P.A. 89-21, and filed a motion asserting that the new statute rendered petitioner in contempt of the 1976 Judgment Order in this action. The Judgment Order was based solely on respondents' federal statutory claims under Title IV-E and enjoined DCFS from denying relatives caring for children in State custody the same opportunity as unrelated caregivers to become qualified under State law as "foster family homes" and receive federal Title IV-E foster care payments. (App. 4a-5a, 90a.) See Miller v. Youakim, 440 U.S. 125, 129 (1979). Respondents also alleged that P.A. 89-21 violated Title IV-E and the Due Process Clause of the Fourteenth Amendment. (App. 29a, 74a.)

Specifically, respondents challenged only the implementation of P.A. 89-21 as applied to current unlicensed relative foster homes. Respondents' Due Process claims alleged that Illinois could not eliminate foster care payments to any existing unlicensed relative homes without first making thousands of individual determinations as to whether these unlicensed homes were eligible for payments as licensed foster homes -- regardless

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[2] After July 1, unlicensed relative homes began receiving monthly "standard of need" payments that were lower than the monthly licensed foster care payments. (App. 60a-61a.)

of whether the relatives had ever applied for payments under the licensed foster care program.

On June 30, 1995, the day before P.A. 89-21 took effect, the district court held that implementation of P.A. 89-21 would violate the Judgment Order, Title IV-E and the Due Process Clause. (App. 80a-81a, 88a.) The district court therefore enjoined Illinois from "reducing foster care payments to all relative foster children currently receiving foster care payments until defendants give those children and their relative foster parents an opportunity to have an[] application for licensure determined on its merits." (App. 88a-89a.)

Petitioner filed a timely notice of appeal from the district court's June 30 order and moved the Seventh Circuit for expedited appeal and a stay of the injunction pending appeal. On July 10 and 12, 1995, respectively, the Seventh Circuit granted both of petitioner's motions.[3]

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[3] The Seventh Circuit vacated the stay of the injunction on September 28, 1995, the day after oral argument. However, on October 10, 1995, the court granted petitioner's emergency motion for reconsideration and reinstated the stay pending disposition of the appeal. (App. 3a n.1.) On December 6, 1995, the Seventh Circuit vacated the stay in its opinion affirming the injunction as modified. On December 21, 1995, the court granted petitioner's motion to reinstate the stay pending the petition for rehearing with suggestion for rehearing en banc. The stay was vacated again by the Seventh Circuit on January 17, 1996, when the petition for rehearing was denied. Petitioner then submitted an application to Circuit Justice Stevens for a stay pending the submission of this petition for certiorari.

(continued...)

On December 6, 1995, the Seventh Circuit affirmed as modified the district court's opinion and order. (App. 1a, 44a.) The Seventh Circuit first considered respondents' claims under the 1976 Judgment Order and Title IV-E, which the court noted prohibits the State from denying federal foster care payments to relative homes "otherwise eligible for such payments." (App. 4a-5a, 18a-20a.) The court held that the 5,000 existing relative caregivers who had been "approved" by DCFS under Title IV-E, but were not licensed, were "otherwise eligible" under the federal program, and thus, the State could not deny Title IV-E foster care payments to these caregivers without first making a determination on licensing applications submitted by these "approved" relative caregivers.[4] (App. 25a-26a.)

The Seventh Circuit, however, overturned the district court's application of the Judgment Order and federal statute to the 8,000 unlicensed and unapproved homes, noting that "[t]he fact that Illinois chose for a period of years to pay foster care benefits to children in [unlicensed and unapproved] homes does nothing to change the requirements of federal law. The State's decision to eliminate payments that were never required by the [Social Security] Act could not itself violate the Act." (App.

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[3](...continued)
On January 26, 1996, Justice O'Connor granted a temporary stay, but ultimately denied petitioner's application for a stay on February 5, 1996.

[4] As stated above, petitioner does not seek review of this portion of the Seventh Circuit opinion.

28a.) Thus, the Seventh Circuit recognized that the foster care payments to these unlicensed and uapproved homes were provided solely under Illinois law and were eliminated as of July 1, 1995, by legislative enactment. (App. 28a-29a.)

The Seventh Circuit's recognition that Illinois was free to "eliminate payments that were never required by" federal law should have conclusively decided respondents' Due Process claims. (App. 28a.) P.A. 89-21 was clearly a legislative enactment eliminating an entire class of State-created foster care payments, and under this Court's precedent, "'the legislative determination provides all the process that is due.'" Atkins v. Parker, 472 U.S. 115, 129-30 (1985) (quoting Logan v. Zimmerman Brush Co., 455 U.S. 427, 432-33 (1982)). However, the Seventh Circuit erroneously held that P.A. 89-21 violated the Due Process Clause for all current relative caregivers, including the 8,000 unlicensed and unapproved caregivers. (App. 29a-40a.) The court held that Illinois was constitutionally required to continue to pay State foster care payments to all of these relatives until the State provided "a DCFS determination on the licensing question." (App. 37a.) Thus, Illinois was required to provide thousands of individualized due process determinations to all current recipients of foster care payments, including recipients who had never been licensed or approved, or had even submitted an application for licensure, before P.A. 89-21 could be implemented.

On December 15, 1995, petitioner filed a timely petition for rehearing with suggestion for rehearing en banc challenging this decision, which the Seventh Circuit denied on January 17, 1996. (App. 45a-46a.)

REASONS FOR GRANTING THE WRIT

The Seventh Circuit opinion directly conflicts with the well-established limits on the reach of the Due Process Clause and eviscerates the sovereign right of a State to legislatively alter or terminate its own social welfare programs. This Court has long held that property interests are "created and defined by statutory terms," Board of Regents v. Roth, 408 U.S. 564, 578 (1972), and when the legislature acts to change those statutory terms, "'the legislative determination provides all the process that is due.'" Atkins, 472 U.S. at 129-30 (quoting Logan, 455 U.S. at 432-33); see also Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 445 (1915). The Due Process Clause simply does not provide any basis for the intrusion of the federal judiciary in second-guessing the public policy choices made by State legislatures in amending or eliminating statutory benefit programs that are created and funded solely by the States.

The Seventh Circuit nonetheless held that the Due Process Clause imposed individual procedural protections for thousands of unlicensed relative foster homes, even though the Illinois legislature had enacted a statute eliminating foster care payments for all unlicensed homes. Thus, Illinois has been enjoined from

implementing this statutory change for all existing unlicensed homes, at a cost of millions of dollars in unbudgeted funds. The implications of this ruling are far-reaching and the need for review by this Court is especially pressing, as this unprecedented expansion of the Due Process Clause comes at a time when State legislatures across the country are facing difficult decisions in reforming their public benefit programs during a time of fiscal crisis.

Illinois was facing just such a crisis when it enacted P.A. 89-21. A three-year study by DCFS indicated that the number of foster children placed with relatives almost quintupled in just seven years, from 5,500 in June 1988 to 25,700 by July 1995. The majority of these homes were unlicensed, and were not even approved under the State's "approval" rules for relative homes. Illinois, however, had a program providing state-funded foster care payments to these unlicensed homes in the same amount as payments to licensed homes. When the Illinois legislature acted to eliminate those payments, the federal court invoked the Due Process Clause to invalidate the statute as it applied to all current unlicensed recipients. The Seventh Circuit held that those recipients could not be deprived of property rights to unlicensed foster care payments -- even though such payments were statutorily eliminated in Illinois as of July 1, 1995 -- prior to being afforded an opportunity to become eligible for licensed payments -- even though these recipients had never before qualified or applied for such benefits.

This ruling flies in the face of this Court's basic premise that "[p]roperty interests are not created by the Constitution," but are instead defined by the terms of the State law creating such interests. Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538 (1985). Even though the Illinois statute eliminated foster care payments to unlicensed homes, the Seventh Circuit somehow construed the Due Process Clause to require that those payments continue until those homes applied and their eligibility was determined for an entirely different benefit, foster care payments to licensed homes. Contrary to the Seventh Circuit's reasoning, any "expectation" that these unlicensed homes might qualify as licensed homes simply is not a constitutionally protected interest. As this court held in Board of Regents v. Roth, 408 U.S. at 577, protected property interests do not arise from a "need or desire" for, or a mere "expectation" of, future benefits from the State. See also Lyng v. Payne, 476 U.S. 926, 942 (1986) (this Court has "never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement"). To hold otherwise would mean that any time a legislature eliminates one program but permits recipients to qualify for another, individual due process protections must be imposed. The Due Process Clause cannot be extended that far.

Instead, as this Court recognized in Atkins, 472 U.S. at 129-30, when the legislature acts to eliminate an entire category of benefits, the legislative process provides all the process due under the Constitution. The enactment by Illinois of P.A. 89-21

thus met the requirements of the Due Process Clause and was erroneously enjoined. This class-wide legislative action is not transformed into an individual, adjudicative decision merely because Illinois also permits unlicensed relatives to qualify as licensed foster homes to receive foster care payments. Thus, the Seventh Circuit's reliance on Logan is misplaced and cannot be used to circumvent the authority of the legislature to eliminate an entire State payment program.

If allowed to stand, this expansive view of the Due Process Clause will infringe upon the ability of State legislatures to make decisions to reform their own benefit programs, and will create new property interests every time a state statute alters welfare benefits, licensing programs or any state-imposed eligibility standards. By requiring thousands (in the case of welfare reform, hundreds of thousands) of individual eligibility determinations, the Seventh Circuit ruling means that any welfare or other benefit reform enacted today cannot become fully effective for months, if not years, and at significantly increased costs.

Thus, the States' ability to respond to ever-changing needs and competing demands will be greatly diminished, and the result will be programs, such as the foster care programs at issue here, that are less responsive to the State's needs, with scarce public resources being allocated in ways ill-suited to meet the public interest. Indeed, without greater certainty about the control of their own social welfare programs and about the effectiveness of any reform they might enact, legislatures may

well view in a different light their initial decisions whether to create such programs.

For these reasons, certiorari should be granted so this Court may review and correct the erroneous and unprecedented intrusion into state legislative decision-making represented by the opinion below.

I.

THE OPINION BELOW CONFLICTS DIRECTLY WITH THIS COURT'S LONG-STANDING PRECEDENT ON THE LIMITS OF THE DUE PROCESS CLAUSE WHEN STATUTORY BENEFITS ARE CHANGED BY STATE LAW

A. Protected Property Interests Are Defined By State Law And Can Be Eliminated By State Law, Such As P.A. 89-21

It is firmly established that the origin and scope of property interests protected by the Due Process Clause stems from the legislature. As this Court has stated, "[p]roperty interests . . . are not created by the Constitution. Rather they are created and their dimensions defined by existing rules or understandings that stem from an independent source such as state law . . . ." Roth, 408 U.S. at 577-78; see also Loudermill, 470 U.S. at 538 (same). Thus, the legislature retains the ability to change the terms of any statutorily created property interest, and the requirements of the Due Process Clause "cannot be stretched

to impose a constitutional limitation on the power of [a legislature] to make substantive changes in the law of entitlement to public benefits." Richardson v. Belcher, 404 U.S. 78, 81 (1971).

The foster care payments at issue here were clearly State-created and State-funded benefits -- indeed, the payments by Illinois to unlicensed relative foster homes were nearly unique among all the states in the country. Consistent with Roth, the Illinois legislature plainly had the authority to enact changes in the terms of these benefits, including the right to "amend or terminate its welfare . . . programs." Logan, 455 U.S. at 432. Accordingly, as of July 1, 1995, all foster care payments to unlicensed foster homes as a class were eliminated. See P.A. 89-21, amending 20 ILCS 505/5(u-5) ("only foster care placements licensed as foster family homes pursuant to the Child Care Act of 1969 shall be eligible to receive foster care payments from the Department"). (App. 9a.) In the first half of its opinion, the Seventh Circuit itself recognized the Illinois legislature's authority; the court noted that as nothing in Title IV-E compelled DCFS to provide foster care payments to unlicensed relative homes, "nothing prevents it from now eliminating those benefits." (App. 28a.)

The Seventh Circuit, however, refused to give effect to this authority, and upheld the injunction compelling DCFS to continue foster care payments to unlicensed caregivers even after the statute had eliminated such payments. The court's

reasoning was based on the notion that currently unlicensed relative homes had a constitutionally protected interest in applying for a foster home license. However, an entitlement cannot arise from a "need or desire" for, or a mere "expectation" of, future payments from the State. Roth, 408 U.S. 564, 577 (1972); see also O'Bannon v. Town Court Nursing Ctr., 447 U.S. 773, 796 (1980) (Blackmun, J., concurring) ("[T]he Constitution does not recognize expectancies that are 'unilateral' or 'too ephemeral and unsubstantial.'").

The Seventh Circuit erroneously held that a protected interest may exist when a legislature eliminates one program (foster care payments to unlicensed homes), yet continues another program for which recipients may still apply (foster care payments to licensed homes). However, none of the 8,000 unlicensed and unapproved homes here had ever previously applied for licensure or been determined eligible for licensure -- indeed, these unlicensed relatives had not even been "approved" under the DCFS rules for Title IV-E approval, despite the fact that they "had a fair opportunity to become 'approved.'" (App. 28a.) Contrary to the Seventh Circuit's holding, the individual procedural protections of the Due Process Clause do not extend to an expectation of or application for licensure. As noted in Lyng v. Payne, 476 U.S. at 942, this Court has "never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement." Indeed, in Roth itself, this Court rejected the argument by the dismissed teacher that he had a property interest

in his position because "most teachers hired on a year-to-year basis . . . are, in fact, rehired." Roth, 408 U.S. at 578 n.16. In the absence of any state law or regulation securing a claim to re-employment, such an "expectation" was not a property interest. Id. The "expectation" of a possible foster home license for these unlicensed homes is not enough to create a protected interest, and the unprecedented holding of the Seventh Circuit to the contrary should be reviewed by this Court and reversed.

B. The Seventh Circuit Wrongly Refused To Recognize That The Legislative Process Here Provided All The Process Due Under The Constitution

The legislative process by which P.A. 89-21 was enacted provided all the process due under the Constitution for the elimination of unlicensed foster care payments. In Atkins, 472 U.S. at 129-30, this Court held that a legislative decision to amend or terminate a statutory entitlement program, such as P.A. 89-21, "provides all the process that is due." A legislature has the "plenary power to define the scope and the duration" of an entitlement it has created, and the recipients of such entitlements are "not deprived of due process when the legislature adjusts benefit levels." Id.; see also Logan, 455 U.S. at 432-33 ("the legislative determination provides all the process that is due" when a legislature decides to "amend or terminate its welfare or employment programs").

The rule that the legislature provides all the process that is due in amending or terminating entitlement programs stems

from the long-standing principle that notice and an opportunity for a hearing, the hallmarks of procedural due process, are neither practicable nor necessary in determining legislative rules. In Bi-Metallic, 239 U.S. at 445, Justice Holmes articulated this principle for the Court: "Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption." The Bi-Metallic Court distinguished Londoner v. City of Denver, 210 U.S. 373 (1908), a case in which procedural due process rights were found to apply, by stating that in Londoner "[a] relatively small number of persons was concerned, who were exceptionally affected, in each case upon individual grounds, and it was held that they had a right to a hearing." Bi-Metallic, 239 U.S. at 446. See also O'Bannon, 447 U.S. at 800 (Blackmun, J., concurring) ("When governmental action affects more than a few individuals, concerns beyond economy, efficiency, and expedition tip the balance against finding that due process attaches.").

This Court has continued to adhere to Bi-Metallic's pragmatic approach when considering procedural due process concerns in the context of class-wide legislative decisions that affect people in the aggregate. See United States v. Florida East Coast Ry., 410 U.S. 224, 246 (1973) (distinguishing between a "legislative-type judgment, for prospective application only," and "adjudicating a particular set of disputed facts"). As stated in Minnesota Board for Community Colleges v. Knight, 465 U.S. 271, 285 (1984):

> [T]he pragmatic considerations identified by Justice Holmes in [Bi-Metallic] are as weighty today as they were in 1915. Government makes so many policy decisions affecting so many people that it would likely grind to a halt were policymaking constrained by constitutional requirements on whose voices must be heard.

See also 2 Kenneth C. Davis & Richard J. Pierce, Jr., Administrative Law Treatise, § 9.2, at 3 (3d ed. 1994) ("Procedural due process does not apply when government makes a policy decision that has an adverse impact on an entire classification of individuals or firms, e.g., all . . . recipients of social security benefits, even if the decision has the same adverse effect on the interests of the members of the group as would an individualized deprivation.").[5]

Plainly the enactment of P.A. 89-21 is just the class-wide legislative determination contemplated by Atkins and Bi-Metallic. The Seventh Circuit's own opinion compels this conclusion, noting that Illinois could properly decide under Title IV-E to eliminate payments to unlicensed homes. (App. 28a-29a.) The Seventh Circuit, however, disregarded its own characterization of P.A. 89-21, and held instead that P.A. 89-21 could not

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[5] See also Davis & Pierce, supra, at § 9.2, at 3 ("The distinction between individualized deprivations, that are protected by procedural due process, and policy-based deprivations of the interests of a class, that are not protected by procedural due process, is central to an understanding of the U.S. legal system.").

be implemented without "individual eligibility determinations," even though most of the unlicensed relatives had not applied for licensure or even "approval." Individual procedural protections of prior notice and hearing for each of these relatives were required, even though such due process requirements apply only to "adjudicating a particular set of disputed facts." Florida East Coast Ry., 410 U.S. at 246; see also Davis & Pierce, supra, at § 9.2, at 3-4 (procedural due process applies only to "individualized fact-based deprivations," not "policy-based deprivations.").

However, the only determination to be made under P.A. 89-21 was whether a home was already licensed or not as of July 1, 1995, in order to decide whether foster care payments would be made. Such a decision is directly akin to the eligibility determination considered by this Court in Atkins, where Congress reduced the amount of a food-stamp recipient's earned-income that a State could disregard in computing the recipient's eligibility for food stamps. Implementation of the changes Congress enacted required calculating each recipient's individual eligibility under the amended provisions of the statute. See Atkins, 472 U.S. at 131 n.35. The statute was by no means "'self-executing.'" Id. at 144 n.21 (Brennan, J., dissenting). Nonetheless, this Court made clear that "individual eligibility determinations" were not at issue; the substantive change in eligibility standards was across the board and thus provided all the process that was due, notwithstanding individual application of that change. Atkins, 472 U.S. at 129; see also id. at

153 n.31 (Brennan, J., dissenting) ("implementation of the . . . law required the Department to make these determinations in each individual case").

Contrary to the Seventh Circuit's view, the "individual factual determinations" in Atkins actually surpass those needed to implement the class-wide policy decision in P.A. 89-21. Unlike the individual calculations required for each food-stamp recipient in Atkins, the change here in foster care payments was based on a purely "mechanical" application of the statute -- which foster homes were licensed as of July 1, 1995. This application did not involve individual eligibility or factual determinations, but rather only the same "class-wide" application of a legislative rule necessary to implement an across-the-board statute.

Thus, the Seventh Circuit's reliance on this Court's decision in Logan is entirely misplaced. Logan held that the Illinois Fair Employment Commission could not constitutionally dismiss a claimant's action because of the agency's failure to convene a fact-finding conference within the State-imposed 120-day deadline. 455 U.S. at 434. But this Court analyzed the 120-day deadline in Logan as "a procedural limitation on the claimant's ability to assert his rights, not a substantive [limit]." Id. at 433.

Here, the foster care payments to unlicensed caregivers were not eliminated as the result of a "procedural limitation"; the payments were eliminated as the result of the legislature's

substantive decision to eliminate the program providing such payments to unlicensed caregivers. P.A. 89-21 does not even purport to establish any procedures or deadlines for the licensing process. Indeed, it was uncontroverted that the July 1, 1995, effective date was selected to coincide with the start of the State fiscal year and to address in a timely manner the serious problems under the old HMR program. The effective date was thus not a "procedure" for "'determining the preconditions to adverse official action,'" Logan, 455 U.S. at 432 (quoting Vitak v. Jones, 445 U.S. 480, 491 (1980)); rather, it was simply the date chosen by the legislature to "amend or terminate its welfare . . . program[]." Id.[6]

Thus, Logan cannot be extended, as in the opinion below, to circumvent the limits on the Due Process Clause articulated

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[6] The Seventh Circuit also relied heavily upon a recent Ninth Circuit decision, Greene v. Babbitt, 64 F.3d 1266 (9th Cir. 1995). (App. 35a-39a.) Greene, however, is distinguishable, as that case involved a tribe that was receiving benefits under a single federal program, and lost the benefits in that program when the eligibility standards changed. Id. at 1269. Here, the requirement of licensure or approval had always existed, but in addition, the State chose to provide payments to unlicensed and unapproved homes as well. The fact that all current recipients of these unlicensed and unapproved foster care payments will no longer receive such payments as the result of the legislature's decision to eliminate the program providing them does not implicate individual due process rights for each such recipient. Moreover, Greene required that only one hearing be held to determine whether the Samish Indians constituted a "tribe." Id. at 1273. Here, on the other hand, the opinion below requires Illinois to conduct literally thousands of individual determinations on "program eligibility" for licensed foster care payments.

in Atkins and its progeny. Otherwise, statutory changes now being considered across the country will be thrown into disarray, with the potential that major legislative reforms will now be subject to unduly expansive individual procedural protections unsupported by the Due Process Clause. Under the opinion below, these enactments will be challenged in federal court, leading to the unconstitutional intrusion of the federal judiciary into this policy-making arena.

II.

SUPREME COURT REVIEW IS NECESSARY TO CORRECT THE UNCERTAINTY CAST ON THE PREROGATIVE OF STATE LEGISLATURES TO ENACT CHANGES TO THEIR OWN BENEFIT PROGRAMS

If left to stand, the opinion below will serve as a critical erosion to a State's sovereign power to control the social welfare programs it creates and funds from its own fisc. See Seminole Tribe of Florida v. Florida, No. 94-12, 64 U.S.L.W. 4167, 4170 (March 27, 1996) (reaffirming that "each State is a sovereign entity in our federal system"). Perhaps most important, this erosion would come at a time when legislatures across the country are attempting to reform such programs. The issue of welfare reform across the nation is so important and so timely that Supreme Court review is necessary to clarify the legislatures' prerogative -- and, indeed, their democratic mandate -- to restructure and reform the very programs they created.

The reform to the Illinois child welfare system effectuated by P.A. 89-21 is but one of numerous welfare reform efforts taking place across the country. See, e.g., Recent Legislation, 109 Harv. L. Rev. 1168, 1168 (1996) ("Sparking a rancorous national debate, numerous state legislatures have recently enacted significant welfare reforms."); Sam Howe Verhovek, Welfare in Transition: The National Picture, N.Y. Times, Sept. 21, 1995, at A1 (stating that "[a]s a canvass of states indicates . . . 'welfare reform' has in fact been taking place all across the country"). In Illinois under P.A. 89-21, a foster caregiver must have a license to obtain foster care payments.[7] Requirements other states have imposed on social welfare recipients in their states include participation in "workfare" programs,[8]

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[7] "[O]nly foster care placements licensed as foster family homes pursuant to the Child Care Act of 1969 shall be eligible to receive foster care payments from the Department." P.A. 89-21, amending 20 ILCS 505/5(u-5). (See App. 9a.)

[8] See, e.g., 70 Del. Laws 66, § 2 (1995) (to be codified at Del. Code Ann., tit. 31, §§ 1501-10); 1995 Pa. Laws 20, § 3 (amending Pa. Stat. Ann. tit. 62, § 405.2 (Supp. 1995)).

time limitations on the receipt of benefits,[9] vaccinations,[10] and mandatory living arrangements.[11]

The Seventh Circuit's opinion below eviscerates a legislature's power to implement these and myriad other reforms in a timely and effective manner. The procedural due process constraints erected by the Seventh Circuit render State legislatures unable to reform, amend, or even terminate their own social welfare programs in response to the ever-changing social needs of their citizens. Instead of making public policy decisions on such programs, enacting them into law, and implementing them in a timely manner to meet those changing needs, legislatures attempting to enact responsive reform will be hindered by the burden of individual eligibility determinations required by the opinion below -- whether the reform concerns a license, vaccination, or some other requirement. Legislatures would be required to wait for months, if not years, to implement changes in social welfare programs. The larger the program is, the longer the delay will be, and the less effective and more costly the legislature's decision to reform it.

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[9] See, e.g., 1994 Ariz. Sess. Laws 166, § 1 (codified at Ariz. Rev. Stat. Ann. § 46-294 (Supp. 1995)), amended by 1995 Ariz. Sess. Laws 247, § 3; 1995 La. Acts 1219 (to be codified at La. Rev. Stat. Ann. § 46:460.I).

[10] See, e.g., 1994 Miss. Laws 582, § 1 (codified at Miss. Code Ann. sec. 43-49-9(4) (Supp. 1994)); 1995 Okla. Sess. Laws 346, § 10 (to be codified at Okla. Stat. tit. 56, sec. 230.8).

[11] See, e.g., 1995 S.C. Acts 102, pt. V, § 4 (requiring minor mothers receiving welfare benefits to live with parents).

Thus, in addition to intruding upon a sovereign State's right to control programs it creates, the opinion below stands to affect adversely the very people who are served by and are in most need of the resources legislatures have devoted to social welfare programs. The very social welfare programs at issue will become less responsive to changing social needs, and public resources will be allocated in ways ill-suited to meet the public interest. Indeed, with the knowledge that they may be unable to alter the social welfare programs they create, state legislatures may well re-think initial decisions whether even to create such programs.

Accordingly, it is critical that this Court review the opinion below. Legislatures must have guidance in the important area of procedural due process in drafting welfare reform legislation. Legislatures must be given reaffirmation by this Court that the decisions they make on a class-wide basis about social welfare programs will be their decisions to make, not a federal court's. Review by this Court would also serve the important interest of judicial economy for federal courts around the country dealing with litigation surrounding reforms to social welfare programs. Without such clarification, both courts and legislatures will encounter grave uncertainty about procedural due process protections due individuals in connection with welfare reform, even with respect to class-wide legislative alterations of social welfare programs.

CONCLUSION

WHEREFORE, for the foregoing reasons, petitioner Jess McDonald respectfully asks this Court to grant a writ of certiorari in this cause, and reverse the judgment of the United States Court of Appeals for the Seventh Circuit.

Dated: April 16, 1996
Chicago, Illinois

Respectfully submitted,

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APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Nos. 95-2575 & 95-2813
MARCEL YOUAKIM, LINDA YOUAKIM, individually, and as foster parents, and TIM ROBERTSON, and all others similarly situated,

Plaintiffs-Appellees/Cross-Appellants,

v.

JESS MCDONALD, Director, Illinois Department of Children and Family Services,*

Defendant-Appellant/Cross-Appellee.

Appeals from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 73 C 635 **John A. Nordberg**, *Judge*.

ARGUED SEPTEMBER 27, 1995 DECIDED
DECEMBER 6, 1995**

Before H. WOOD, JR., ROVNER, and EVANS, *Circuit Judges*.

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* In accordance with Fed. R. Civ. P. 25(d)(1), Jess McDonald, current Director of the Illinois Department of Children and Family Services, has been substituted as the defendant in this action for Jerome Miller, the Department's director when the suit was originally filed.

** This opinion was originally released in typescript.

ROVNER, *Circuit Judge*. The dispute before us in this twenty-two-year-old case concerns the implementation of legislative reforms to Illinois' foster care benefit program. *See* P.A. 89-21, *amending*, 20 ILCS 505/5. Earlier this year, the Illinois Department of Children and Family Services ("DCFS" or "the Department") proposed its Home of Relative Reform Plan ("HMR Reform"), which was passed by the Illinois General Assembly and signed into law by Illinois' Governor in June of this year. Under HMR Reform, all homes providing foster care must be licensed under state law before resident children will be eligible to receive foster care benefits. Prior to the effective date of the reforms (July 1, 1995), however, Illinois required a license only for homes providing foster care to non-relative children. Children who were cared for by relatives, by contrast, were eligible to receive benefits although they resided in unlicensed homes. The effect of the reforms, then, is to terminate the foster care benefits of children in relative homes while the homes attempt to become licensed.

Plaintiffs, a class of foster parents and children who stand to lose their benefits because their homes are not yet licensed, invoked the district court's continuing jurisdiction to enforce the August 24, 1976 judgment entered in this case for the purpose of challenging the implementation of the reforms. Plaintiffs do not quarrel with the new licensing requirement but contend that their benefits cannot be terminated before they are provided an adequate opportunity to become licensed. They argue that the transition process, by denying them such an opportunity,

violates the earlier judgment and the Due Process Clause of the Fourteenth Amendment. On the day before the reforms were to take effect, the district court enjoined the Department's Director from terminating or suspending foster care payments to children in unlicensed relative homes without first providing those homes the opportunity to have a license application determined on its merits. The district court explained in a detailed opinion how the proposed implementation of HMR Reform would violate the 1976 judgment and plaintiffs' right to due process. *See Youakim v. McDonald*, No. 73 C 635, slip op. (N.D. Ill June 30, 1995). The Director appeals that interlocutory injunction to this court, invoking our jurisdiction under 28 U.S.C. § 1292(a)(1).[1] We now affirm the district court's injunction as modified below.

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[1] The Director asked the district court to stay enforcement of its order pending resolution of his appeal. That court denied the Director's motion, but another panel of this court agreed to expedite the Director's appeal and to stay enforcement of the district court's injunction. This panel then heard oral argument on September 27, 1995, three days prior to the date on which children in approved but unlicensed relative homes were scheduled to lose their benefits. After argument, we vacated the stay order, thus preventing the Director from enforcing the scheduled cut-off date. On the following day, however, we were notified that DCFS had extended the cut-off date to January 1, 1996. Because this ensured that children in approved relative homes would retain their benefits during the pendency of this appeal, we granted the Director's motion to reconsider and reimposed the stay.

I. BACKGROUND

The relevant facts are not disputed. The parties stipulated to many of the facts below, and the district court made further factual findings after a two-day evidentiary hearing. Because the Director has not challenged the district court's findings here, we accept them as true and describe them below along with the stipulated facts. First, however, we provide a brief history of the earlier litigation that culminated in the entry of the 1976 judgment.

A. The Earlier Case

The initial dispute in this case involved Illinois' decision to exclude children in relative homes from eligibility for foster care benefits. *See Miller v. Youakim*, 440 U.S. 125, 130-31 (1979) (citing Ill. Ann. Stat. ch. 23, § 2212.17 (Supp. 1978)). Illinois paid such benefits only to children in homes that were licensed under state law, and it prohibited the licensing of relative homes. Thus, a child placed with a relative was ineligible to receive foster care benefits although the same child would have been eligible had he been placed in the home of a non-relative. The district court certified a class of related children and foster parents and subsequently held that Illinois' policy of denying foster care benefits to otherwise eligible children in relative homes violated §§ 401 and 408 of the Social Security Act, 42 U.S.C. §§ 601 & 608. *See Youakim v. Miller*, 431 F. Supp. 40 (N.D. Ill. 1976). In a judgment dated August 24, 1976, the

court invoked the Constitution's Supremacy Clause to enjoin Illinois from enforcing any state law or administrative policy that had the effect of denying full foster care benefits to such children. The district court's judgment was affirmed by this court, 562 F.2d 483 (7th Cir. 1977), and by a unanimous United States Supreme Court, 440 U.S. 125 (1979). The present dispute involves developments in Illinois since the Supreme Court's 1979 decision.

B. Pre-Reform System

When DCFS takes over custody or guardianship of a child, it attempts to make a substitute placement with either a relative, a non-relative, a group home, or an institution. Subsequent to the Supreme Court's decision in *Miller*, Illinois has paid foster care benefits to children placed in three categories of homes preapproved, approved, and licensed. Both the preapproved and approved categories were comprised entirely of relative homes, because Illinois law still required, as it had prior to the *Miller* decision, that all non-relative caregivers be licensed. Although a relative home could also obtain a license, it was not required to do so before a child could be placed and receive foster care benefits.

In contrast to non-relative homes, DCFS is permitted to place a child in a relative home even before that home becomes licensed or approved under state law. The home must only pass an initial safety check that is considerably less detailed and onerous for both DCFS and the caregiving family than the

licensing and approval processes. *See* 89 Ill. Admin. Code § 335.202 (detailing "pre-conditions" for placement of child in relative home) (repealed effective July 1, 1995). A home that has passed this initial safety check is referred to as a "preapproved" home. Such a home could subsequently become approved or licensed under state law, although it had no financial incentive to do so because licensure was not a requirement for the receipt of full foster care benefits. Because these homes were neither approved nor licensed under state law, however, the federal government did not reimburse the State for benefits paid to resident children under the terms of the Social Security Act. *See* 42 U.S.C. § 672(c) (providing for federal reimbursement of payments made only to children in licensed or approved homes).

In 1986, Illinois officially recognized a category of "approved" relative homes, which were required to meet standards "substantially the same with regard to the safety, health and welfare of children as those promulgated for licensure of unrelated foster family homes pursuant to the Child Care Act of 1969." 89 Ill. Admin. Code § 335.102 (repealed effective July 1, 1995); *see also* 89 Ill. Admin. Code § 402 (setting out licensing standards for foster family homes) (amended effective July 1, 1995).[2] Once DCFS confirmed that a relative home met

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[2] It does not appear that in 1973, when the Youakims filed this lawsuit, the State of Illinois maintained an official category of "approved" relative homes. The district court found as a factual matter, however, that the

(continued...)

its licensing standards, the State of Illinois qualified for federal reimbursement of foster care benefits paid to resident children even if the home was not actually licensed. *See* 42 U.S.C. § 672(c) (a "foster family home" under the Social Security Act includes a home that "has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing"). The district court found that Illinois created the approved category in 1986 at least in part to make it easier for DCFS to place dependent children with relative caregivers.

When a child is first placed in DCFS custody or guardianship, she is assigned a caseworker who attempts to procure a placement for that child. The caseworker also has the responsibility, once a placement is made, of shepherding the caregiver through the approval and licensing processes. The caseworker assigned in any given circumstance may be employed by DCFS itself, or by one of sixty-seven child welfare agencies (*e.g.*, Catholic Charities) that work on behalf of the Department. As of April 30, 1995, the cases of 31,596 out of 47,007 dependent children placed in private homes were managed by private

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[2](...continued)
Youakim home had been approved by the State of Illinois as meeting its licensing standards for purposes of section 408 of the Social Security Act, 42 U.S.C. § 608.431 F. Supp. at 43-44 & nn.4 & 5; *see also* 562 F.2d at 488 (rejecting claim that district court's factual finding was in error).

welfare agencies rather than by DCFS itself.[3] Nine of the sixty-seven participating private welfare agencies are what we will call "approval only," meaning that caseworkers from those agencies have no authority to license or to participate in the licensing of a foster family home. Children who were assigned to a caseworker from such an agency thus had little if any opportunity to reside in a licensed home.

The district court found, moreover, that to the extent DCFS and the private agencies encouraged preapproved relative caregivers to become either approved or licensed, they generally encouraged the approval process, which was less onerous for both the placing agency and the caregiving family. Whether a relative home was licensed or merely approved also made no difference to the State's ability under the Social Security Act to receive federal reimbursement for dispersed benefits. *See* 42 U.S.C. § 672(c) The statistical evidence before the district court revealed that as of April 30, 1995, only 1.2 percent of all children residing in relative homes lived in licensed homes, whereas 42.6 percent of those children lived in approved homes. An additional 22.2 percent lived in preapproved homes that

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[3] More than half of the total number of children in DCFS custody had been placed in relative homes (26,368 out of 47,007), which was consistent with Illinois' preference for relative placements. *See* 20 ILCS 505/7(b) (amended effective July 1, 1995).

had applications for approval pending.[4] The district court found from the statistical evidence that the private welfare agencies had been more successful than the Department in getting relative homes approved or licensed 44.8 percent of private agency homes were approved or licensed as compared to only 21.4 percent of DCFS homes. The Department's failure in this regard is surprising in light of the fact that the State of Illinois is entitled to federal reimbursement only for foster care benefits paid to children in licensed or approved homes. Because the State also paid unreimbursed benefits to relative children in preapproved homes, DCFS had a significant incentive to shepherd relative homes at least through the approval process. The fact that so many relative children received unreimbursed benefits from the State was one factor that prompted the reforms.

C. HMR Reform

DCFS proposed HMR Reform on March 1, 1995, and it became law a little more than three months later. The operative reform provision relevant to this litigation provides as follows:

> Effective July 1, 1995, only foster care placements licensed as foster family homes pursuant to the Child Care Act of 1969 shall be eligible to receive foster care payments from the Department. Relative caregivers who, as of July

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[4] The statistics are similar if relative homes themselves, as opposed to children in relative homes, are considered: 1.3 percent of relative homes were licensed, 35.2 percent were approved, and 26.1 percent had applications for approval pending.

> 1, 1995, were approved pursuant to approved relative placement rules previously promulgated by the Department at 89 Ill. Adm. Code 335 and had submitted an application for licensure as a foster family home may continue to receive foster care payments only until the Department determines that they may be licensed as a foster family home or that their application for licensure is denied or until September 30, 1995, whichever occurs first.

P.A. 89-21, *amending* 20 ILCS 505/5(u-5). Under HMR Reform, then, Illinois will pay foster care benefits only to those relative and non-relative homes that are licensed under state law. The new licensing requirement has no effect on non-relative homes, as Illinois has always required such homes to be licensed. For existing relative homes, however, the impact of the reforms is significant and potentially devastating. Children in preapproved relative homes who qualified to receive foster care benefits prior to July 1, 1995 would have their benefits eliminated on that date, regardless of whether their caregiving home applied to DCFS for a license on or before June 30, 1995.[5] Foster care benefits to children in preapproved homes would be reinstated

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[5] The foster care benefits of children in preapproved homes were in fact eliminated in July of this year, after a panel of this court stayed enforcement of the district court's injunction pending resolution of the Director's appeal. Because the order we are reviewing speaks of the implementation process as a future event, rather than as having already begun, we follow the same format for the sake of consistency, recognizing however that certain of the reforms already have been implemented by the time of this writing.

under HMR Reform only if the home were to ultimately succeed in obtaining a license, and the affected child would not then be entitled to recover the benefits lost between July 1 and the date of licensing. As of July 1, children in preapproved homes would begin to receive assistance under two alternative programs, but at significantly reduced benefit levels.

While HMR Reform cuts off benefits to children in preapproved relative homes, it eliminates entirely the category of approved relative homes. Those homes that were previously approved by the State of Illinois as meeting its licensing standards must also become licensed in order for resident children to retain their foster care benefits. In contrast to its treatment of preapproved homes, however, HMR Reform provides a transition process that enables approved homes to apply for a license while resident children retain their current benefits. If an approved home submits a license application on or before June 30, resident children retain their benefits until the Department denies the application or until September 30, 1995, whichever occurs first.[6] But this procedure does not ensure that a child's benefits will not be eliminated before the Department renders a decision on the license application. Indeed, the district court found from the statistical evidence that the Department would be unable

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[6] The Director's counsel told us at oral argument that approximately ninety percent of homes in the approved category submitted license applications by June 30. As we explained *supra*, at n.1, DCFS extended the September 30 cut-off date to January 1, 1996.

to process and decide the applications of approved homes prior to the scheduled cut-off date.[7]

After the implementation of HMR Reform, relative and non-relative caregivers will be required to meet the same licensing standards, which are slightly more stringent than those that were in place prior to HMR Reform. A home that was licensed as of July 1, 1995, however, need not meet the new standards until its current license expires.[8] Approved and preapproved relative homes, however, must immediately meet the new licensing standards in order to retain their current benefits.

Prior to HMR Reform, it was the Department's policy that preapproved caregivers must apply to be approved or licensed to retain a child placed in their care. As the district court observed, however, the Department rarely enforced this policy because approximately one-third of relative homes were

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[7] When the court made that finding, the cut-off date was September 30, 1995, rather than January 1, 1996. The court was unable from the evidence to estimate the time it would take DCFS to process the large number of license applications that would be generated by the reforms, finding only that the average period for processing an application would exceed ninety days. (Dist. Ct. Mem. Op. at 17-18.) The Director's counsel also was unable to estimate at oral argument how many license applications would remain pending after September 30.

[8] Prior to HMR Reform, a license was valid for two years unless revoked by the Department (89 Ill. Admin. Code § 402.6(a) (1994)), but a license issued under the new standards is valid for four years. 89 Ill. Admin. Code § 402.7(a) (effective July 1, 1995).

both unapproved and unlicensed as of April 30, 1995. (Dist. Ct. Mem. Op. at 12 n.11.) Under HMR Reform, a preapproved relative home is required to obtain a license only to enable a resident child to receive foster care benefits; the lack of a license does not affect its ability to provide care for the child. Thus, DCFS will not remove children previously placed with approved or preapproved relative homes if those homes fail to apply for or to obtain a license under HMR Reform. It simply will refuse to pay foster care benefits to children in such homes.

DCFS began the process of implementing HMR Reform even before Illinois' Governor signed the legislation into law. The Department first notified relative caregivers of the reforms in April 1995. It then provided a second notice on April 28, 1995, and this time included a license application in notices sent to approved homes and preapproved homes with applications for approval pending. Preapproved homes that had not yet applied for approval were instructed to obtain a license application from their caseworker. DCFS sent yet another notice to relative caregivers on approximately June 12, 1995.

D. The Proceedings Below

Plaintiffs invoked the district court's continuing jurisdiction under the 1976 judgment to revive this long-dormant litigation, arguing that the implementation of HMR Reform would violate the judgment order. Plaintiffs asked that the implementation process be enjoined and that the Director be held in contempt. After expedited discovery and briefing, the district court absolved

the Director of the contempt charge, but on the day before their scheduled effective date, the court enjoined the implementation of the reforms as to existing benefit recipients residing in approved and preapproved relative homes. Specifically, the court prevented the Director from eliminating the foster care benefits of children in unlicensed relative homes without first providing those homes an adequate opportunity to become licensed. The court concluded that the transition proposed by the Department would violate the judgment order, the Social Security Act, and the Due Process Clause of the Fourteenth Amendment. To remedy these violations, the court required DCFS to mail an additional notice of the reforms to both approved and preapproved relative caregivers and to include with the notice a license application. The caregiver would then have thirty-five days from the date of mailing to submit the application to the Department. DCFS would be entitled to eliminate the foster care benefits of any child in a relative home that failed to submit a license application within thirty-five days. For children in homes submitting timely applications, however, DCFS would be enjoined from eliminating benefits until a decision was rendered on the application. The court's injunction had the effect, therefore, of prohibiting enforcement of the September 30, 1995 (now January 1, 1996) cut-off date as to those approved homes with timely license applications pending, and of preventing the July 1, 1995 termination of benefits to children in preapproved homes.

II. DISCUSSION

We review the district court's interlocutory injunctive order in accordance with Fed. R. Civ. P. 52(a). We review the court's factual findings for clear error and its conclusions of law de novo. *Durasys, Inc. v. Leyba*, 992 F.2d 1465, 1471 (7th Cir. 1993). To the extent Judge Nordberg interpreted the terms of the 1976 judgment, which was entered by a different district judge, we accord his interpretation no deference and review the requirements of that judgment de novo. *Schering Corp. v. Illinois Antibiotics Co.*, 62 F.3d 903, 908-09 (7th Cir. 1995). We first consider whether plaintiffs were entitled to relief under the 1976 judgment and the provisions of the Social Security Act giving rise to that judgment. We then address plaintiffs' claim under the Due Process Clause. *See Atkins v. Parker*, 472 U.S. 115, 123 (1985) (considering statutory issue prior to reaching constitutional question).

A. 1976 Judgment Order

1.

Plaintiffs contend that the transition to HMR Reform violates the 1976 judgment, which prohibits the State from enforcing any law or administrative policy that has the effect of denying full foster care benefits to otherwise eligible children in relative homes. Plaintiffs maintain that by eliminating the foster care benefits of children in unlicensed relative homes, DCFS will be discriminating against those homes on the basis of their

relative status. The Director disagrees, arguing that because relative and nonrelative homes have the same opportunity to become licensed under HMR Reform, there is no violation of the earlier judgment. Yet the district court found that the licensing opportunities are the same only for relative children and parents who enter the foster care system after the July 1, 1995 effective date of the reforms. All plaintiffs here were receiving foster care benefits under Illinois' prereform system, and they challenge only the process of transition to rather than the substance of the reforms. The district court found that the Department's proposed transition had the effect of denying full benefits to otherwise eligible children in relative homes solely because of their relative status. The court's finding was based on the undisputed fact that Illinois had previously channelled relative homes toward the approved or preapproved categories without providing those homes an equal opportunity to become licensed. The court concluded that by now eliminating the benefits of children in unlicensed relative homes, the Department would be disfavoring relative caregivers in violation of the earlier judgment order, and it therefore enjoined implementation of that aspect of the reforms.

The 1976 judgment is in the nature of an injunction, and in construing its terms, we must pay particular heed to the nature of the dispute in which it originated. In general terms, we must construe injunctions in light of the circumstances that produced them, which may include the nature of the original claim, the relief that was sought, the evidence presented at any hearing or trial, the issues actually decided by the earlier tribunal, and

the mischief the injunction was designed to eradicate. *See City of Vicksburg v. Henson*, 231 U.S. 259, 273 (1913); *Haskell v. Kansas Natural Gas Co.*, 224 U.S. 217, 223 (1912); *United States v. Christie Indus., Inc.*, 465 F.2d 1002, 1007 (3d Cir. 1972). This is another way of saying that the terms of an injunction, like any other disputed writing, must be construed in their proper context. *Cf. Florida East Coast Ry. Co. v. CSX Transp., Inc.*, 42 F.3d 1125, 1129 (7th Cir. 1994) (language in settlement agreement must be interpreted with attention to the circumstances under which it was written). As a result, courts at times will construe a broadly-worded injunction more narrowly in order to be faithful to the issues actually raised and decided in the earlier litigation. *See Vicksburg*, 231 U.S. at 269; *Nerney v. New York N. H. & H. R. Co.*, 83 F.2d 409, 411 (2d Cir. 1936). At the same time, however, courts have found conduct to violate an injunction if it threatens the spirit if not the literal language of the earlier order. *See Christie Indus.*, 465 F.2d at 1009-11; *John B. Stetson Co. v. Stephen L. Stetson Co.*, 128 F.2d 981, 983 (2d Cir. 1942); *see also Schering Corp.*, 62 F.3d at 906-07.

The Director here argues that in finding a violation of the 1976 judgment, the district court impermissibly expanded the scope of a limited and relatively ancient injunction. In the Director's view, the 1976 judgment was addressed only to a limited violation of the federal Social Security Act, and it thus should not be read to prohibit substantive reforms to Illinois' foster care program so long as access remains equally open

and available to relatives and non-relatives alike. In order to address the Director's argument, then, we must consider the nature of the dispute that culminated in the earlier judgment.

2.

In 1973, when the underlying lawsuit was filed, only children in homes licensed by the State of Illinois were eligible to receive foster care benefits. *See Miller*, 440 U.S. at 131. Under state law, moreover, relative homes could not obtain a license because Illinois defined a "foster family home" to include only those facilities providing family care to children "unrelated to them." *See id.* at 130-31 (quoting former Illinois statute). Thus, although their home had been approved by DCFS "as meeting the licensing standards established for unrelated foster family homes," the Youakims were ineligible under Illinois law to receive foster care benefits because the children in their care were relatives. *Id.* at 130; *see also Youakim*, 562 F.2d at 488; 431 F. Supp. at 43-44 & n.4. Plaintiffs maintained that Illinois' practice of paying benefits only to children in unrelated homes violated the federal Social Security Act, which in their view did not distinguish between related and unrelated foster homes.

The Social Security Act sets out the circumstances under which the federal government will reimburse states for foster care payments made to dependent children. To qualify for reimbursement, the state must have placed a child in a "'foster family home or child-care institution.'" *Miller*, 440 U.S. at

127-28 (quoting 42 U.S.C. § 608(a)(3), *now codified at* 42 U.S.C. § 672(a)(3)). "Foster family home" is defined in the Act to include a home "'which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type, as meeting the standards established for such licensing.'" *Id.* at 127 n.1 (quoting 42 U.S.C. § 608(f), *now codified at* 42 U.S.C. § 672(c)). The question raised by plaintiffs' earlier claim was thus whether Illinois' decision to exclude relative homes from its definition of a "foster family home," and therefore to deny benefits to children in relative homes that had been approved by DCFS, violated federal law.

The district court, this court, and a unanimous United States Supreme Court all found that Illinois was violating the Act. 431 F. Supp. 40 (N.D. Ill. 1976), *aff'd*, 562 F.2d 483 (7th Cir. 1977), *aff'd*, 440 U.S. 125 (1979). The Supreme Court held that the Social Security Act requires benefits to be paid to "any home that a State approves as meeting its licensing standards." 440 U.S. at 135; *see also id.* at 145 ("we hold that the [federal] program encompasses foster children who, pursuant to a judicial determination of neglect, have been placed in related homes that meet a State's licensing requirements for foster homes."). This court had reached a similar conclusion: "if the Youakims' home has been approved by the DCFS as meeting the standards established for the licensing of foster care homes, it falls within the statutory definition." 562 F.2d at 487. Thus, the Supreme Court and this court found it inconsistent with federal law for

Illinois to approve related homes as meeting its licensing standards but then to deny benefits to those homes on the ground that they were not actually licensed. *See* 440 U.S. at 140-41; 562 F.2d at 487-88. This was the "mischief" the 1976 judgment was designed to eradicate.

3.

The question here is whether Illinois' transition to HMR Reform also denies benefits to otherwise eligible children in relative homes. Plaintiffs contend that by denying benefits to children in approved and preapproved relative homes while those homes attempt to become licensed under HMR Reform, the Director will violate paragraph four of the judgment order, which provides as follows:

> Defendants, their agents, employees and all other persons in active concert with them are enjoined from:
>
> > (a) enforcing [Illinois law] and all implementing administrative policies and procedures, insofar as they exclude from eligibility, or deny full [Title IV-E] payments or ancillary benefits to, foster children living in foster homes maintained by related foster parents, and to these related foster parents, when such children and such parents are otherwise eligible for such payments and benefits;
> >
> > (b) failing to pay full [title IV-E] payments to foster children living in foster homes maintained by related foster parents, and to these related foster parents, when

> such children and parents are otherwise eligible for such payments . . . .

(August 24, 1976 Judgment ¶ 4.) The parties focus their dispute on whether relative children and parents in approved and preapproved homes are "otherwise eligible" to receive foster care benefits under the terms of the judgment.

Plaintiffs maintain that relative children and parents are "otherwise eligible" under paragraph four "if they claim that they will meet federal statutory eligibility requirements, correctly interpreted." (Pl. Br. at 25.) Under plaintiffs' interpretation, then, it would make no difference whether a home has been approved or only preapproved under the pre-reform system because homes in both categories could claim, in applying for a license, that they in fact will meet federal eligibility criteria. The Director, by contrast, contends that relative children and parents are not "otherwise eligible" under paragraph four unless their homes actually have been licensed under Illinois law. Because HMR Reform eliminates the category of approved relative homes, the Director believes that "'approved' relatives are no longer 'otherwise eligible' for [foster care benefits], unless [and until] they become licensed under the new licensing standards." (Director's Reply Br. at 8.) We do not believe that either of these interpretations is the correct one, as neither plaintiffs nor the Director pay proper heed to the nature of plaintiffs' claim in the underlying litigation or the violation of federal law that the judgment was designed to eradicate.

The Supreme Court and this court found that Illinois' former practice of paying foster care benefits only to children under

the care of non-relatives who were licensed under state law violated the Social Security Act because homes approved by a state as meeting its licensing standards are encompassed within the Act's definition of a "foster family home." *See Miller*, 440 U.S. at 135; *Youakim*, 562 F.2d at 487. Thus, a state violates federal law by approving relative homes but denying benefits to children in those homes because the home is unlicensed. The Act of course does not require that a state approve any home as meeting its licensing standards, and as plaintiffs concede, Illinois does not violate the Act by eliminating the "approved" category and requiring in the future that dependent children reside in licensed homes before they will be eligible for foster care benefits. (*See* Dist. Ct. Mem. Op. at 21.)

But what of the many homes that Illinois already has approved as meeting its licensing standards? Does the State's subsequent elimination of the "approved" category have the effect, as the Director contends, of negating the status those homes previously attained and eliminating the State's obligation to pay benefits under the Act? We think not, because the State previously approved these homes as meeting its licensing standards and made that approval effective for a period of four years. *See* 89 Ill. Admin. Code § 335.300 (repealed effective July 1, 1995). The State is now attempting to remove the "approved" designation prior to the expiration of the four-year period without providing the affected homes an adequate opportunity to obtain a license before losing their benefits. Yet because homes in the approved category meet Illinois' licensing standards, as

determined by the Department itself,[9] those homes are covered by the Act (*see* 42 U.S.C. § 672(c)), just as the Youakim home was in 1976. The fact that Illinois now has eliminated the "approved" category and has required all foster homes to be licensed does not eviscerate the fact that it already approved these relative homes as meeting its licensing standards. *Cf. Miller v. Carlson*, 768 F. Supp. 1331, 1339 (N.D. Cal. 1991) (enjoining California from eliminating Aid to Families with Dependent Children ("AFDC") payments to plaintiffs in previously-approved educational and training programs). It is thus unpersuasive for the Director to argue that plaintiffs in the "approved" category are not actually "approved" because the State eliminated that category under HMR Reform. Illinois also had no official "approved" category in 1976, but the Supreme Court required the State to pay foster care benefits to the Youakims, who had been approved by the State as meeting its licensing standards. *See* 440 U.S. at 130, 137-38; *see also Youakim*, 562 F.2d at 487-88 & n.5. The claim of the present plaintiffs is even stronger, as they have officially been approved as meeting the State's licensing standards.

In short, the Director's argument that approved relative homes are ineligible for foster care benefits because they are not licensed fares no better today than it did in the 1970s. *See*

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[9] *See* Ill. Admin. Code § 335.102 (repealed effective July 1, 1995) (approval standards "are substantially the same with regard to the safety, health and welfare of children as those promulgated for licensure of unrelated foster family homes pursuant to the Child Care Act of 1969.").

Youakim, 562 F.2d at 488. This court and the Supreme Court held that a licensing policy under which a state approves homes as meeting its licensing standards without actually issuing a license, and then denies benefits on the ground that the home is unlicensed, violates the Act, because children in approved homes meet federal eligibility criteria and cannot be denied benefits. *Miller*, 440 U.S. at 134-135, 145; 562 F.2d at 486-87. It was therefore a violation of the Act in 1976 for Illinois to license and to pay benefits only to children in unrelated homes, and we think it also violates the Act today for Illinois to deny benefits to children in relative homes it previously approved as meeting licensing standards on the ground that the approved category has now been eliminated and the home is currently unlicensed, particularly where the State has provided approved homes with little if any opportunity to become licensed.

The Director tells us, however, that these situations are distinguishable because homes currently in the approved category always had the opportunity to become licensed but failed to avail themselves of that opportunity. Yet the district court found that DCFS itself was responsible for the unlicensed status of these homes (Dist. Ct. Mem. Op. at 23), and its findings in that regard have not been challenged on appeal. Specifically, the district court found that the licensing process was not effectively available to relative homes for two reasons. First, DCFS preferred to place children with relative caregivers, and "to the extent [it] encouraged relative caregivers to apply to become approved or licensed, DCFS usually encouraged the approval process, which was easier for both DCFS and the family

involved." (Dist. Ct. Mem. Op. at 10, 16.)[10] Second, with respect to relative placements made by private agencies, which significantly outnumbered the placements made by DCFS itself, the licensing process was sometimes completely unavailable, as nine of sixty-seven private placement agencies were authorized to approve but not to license relative homes. (*Id.* at 16.) For homes handled by these agencies, then, no opportunity to obtain a license was ever available. (*Id.*) Because the licensing process was thus not equally available to relative homes in the years prior to HMR Reform, those homes are in much the same position today as relative homes were in 1976 *i.e.*, they could be approved as meeting Illinois' licensing standards, but they did not have the same opportunity as non-relative homes to become licensed. To deny foster care benefits to children in these approved homes during the transition to HMR Reform

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[10] In that regard, the district court found:

> As of April 30, 1995, only 1.2% of all related children in foster care resided in licensed homes, while 42.6% of such children lived in approved homes. In addition, 22.2% of the preapproved homes had applications for approval pending. With respect to number of homes, the evidence is similar. As of April 30, 1995, 1.3% of all homes with related children were licensed while 35.2% were approved. Homes with pending applications for approval accounted for 26.1% of the total number of homes with related children.

(*Id.* at 17.) Moreover, the Director stipulated below that DCFS created the "approved" category in 1986 in part to make it easier for the agency to place children with relative caregivers. (*Id.* at 9.)

on the ground that the home is not licensed will thus discriminate against children that are "otherwise eligible" for benefits under the Social Security Act solely on the basis of their relative status. Implementation of the reforms as to approved but unlicensed relative homes will therefore violate both the Act and paragraph four of the 1976 judgment. To prevent such a violation, the district court properly enjoined the Director from denying foster care benefits to children in approved relative homes until he has provided those homes an adequate opportunity to become licensed.[11]

4.

The district court's injunction was not limited to relative homes in the approved category, however, because it also prevents the Director from eliminating the benefits of children in preapproved relative homes.[12] The court did not distinguish between homes in the approved and preapproved categories but found that Illinois' former practices disfavored all relative caregivers in violation of the judgment order. Yet we do not believe that either the Social Security Act or the 1976 judgment

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[11] As to these homes, the district court's injunction will not cost Illinois a cent because the federal government reimburses the State for foster care benefits paid to dependent children in approved homes.

[12] The Director stopped paying benefits to these children, however, in July of this year, after a panel of this court stayed enforcement of the injunction.

would prevent the Director from implementing HMR Reform with respect to relative homes in the preapproved category, even if those homes had an application for approval pending on the effective date of HMR Reform. The 1976 judgment goes no further than to enjoin the State from implementing laws or policies that violate federal law, and Illinois would not violate the Social Security Act by eliminating the benefits it previously paid to children in relative homes that were neither licensed nor approved under state law.

As we explained above, section 672(c) defines a "foster family home" to include licensed homes and those approved by the appropriate agency as meeting the state's licensing standards. Significantly, the statute encompasses only those homes that *have been approved* (42 U.S.C. § 672(c)), not, as plaintiffs suggest, homes merely claiming to be capable of meeting approval requirements. Consistent with the language of the statute, then, each court that considered the Youakims' earlier claim emphasized that the Youakim home *had been approved* by DCFS as meeting the licensing standards of the State of Illinois. *See* 440 U.S. at 130, 135; 562 F.2d at 486, 488; 431 F. Supp. at 43-44 & n.4. But a relative home not so approved is not a "foster family home" under the Act, and thus, the Act does not require the State to pay foster care benefits to a child in such a home. Indeed, if a state decides to pay foster care benefits to children in preapproved homes, as Illinois did, it receives no reimbursement from the federal government under the Act.

The fact that Illinois chose for a period of years to pay foster care benefits to children in preapproved homes does nothing to change the requirements of federal law. The State's decision to eliminate payments that were never required by the Act could not itself violate the Act. Moreover, plaintiffs in the preapproved category do not argue, and the district court did not find, that the former *approval* process was unavailable to them. Those plaintiffs had a fair opportunity to become "approved." Indeed, more than one-third of the relative homes in Illinois had been approved, and many more had applications for approval pending on the effective date of HMR Reform.[13] The district court focused instead on the fact that plaintiffs in the preapproved category lacked a financial incentive to endure the approval or licensing processes because Illinois voluntarily exceeded its obligations under the Social Security Act and paid full benefits even to children in preapproved homes. Again, however, nothing in the federal statute required Illinois to extend foster care benefits to these children, and nothing prevents it from now eliminating those benefits. Thus, because children in preapproved homes do not reside in "foster family homes" for purposes of section 672 of the Act, they are not "otherwise

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[13] The district court did find that there were certain administrative problems at DCFS that hindered the approval and licensing processes (Dist. Ct. Mem. Op. at 11), but the court did not rely on this fact in concluding that homes in the preapproved category also were entitled to relief under the Judgment Order. The court's findings in that regard, however, would not support a conclusion that the approval process was unavailable to relative homes.

eligible" for foster care benefits within the meaning of paragraph four of the 1976 judgment. That is the only interpretation of the "otherwise eligible" language that is faithful to the injunction's purpose of eradicating the identified violation of federal law. The judgment cannot be read to confer benefits on children in preapproved homes to which the Act did not otherwise entitle them. Plaintiffs in the preapproved category were thus entitled to no relief in the district court under the terms of either the 1976 judgment or the Social Security Act.

B. Due Process

The district court found that the proposed transition to HMR Reform also violates the procedural due process rights of children in approved and preapproved relative homes. The Director challenges this conclusion too, contending that the legislative reforms eliminated any property interest the children may have had in continued benefits, and alternatively, that the legislative process was all that was due. Having found that only those relative children residing in approved homes are entitled to relief under the earlier judgment, we must reach this constitutional question, as it also concerns the rights of children in preapproved homes.

In analyzing a claim under the Due Process Clause of the Fourteenth Amendment, we must answer two questions: first, whether plaintiffs were deprived of a protected property interest, and if so, what process was due them in connection with that deprivation. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422,

428 (1982); *Somerset House, Inc. v. Turnock*, 900 F.2d 1012, 1015 (7th Cir. 1990). The district court found that the foster care benefits here are a species of property that is protected under the Constitution, and the State does not seriously contest that conclusion. Entitlements to a broad range of health and welfare benefits have been considered as "property" under the Due Process Clause. *See, e.g., Atkins v. Parker*, 472 U.S. 115, 128 (1985) (food-stamp benefits); *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976) (disability benefits); *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (welfare benefits). The Director has offered no meaningful distinction between the benefits at issue in the cited cases and the foster care benefits that concern us here. Perceiving no distinction ourselves, we agree with the district court that foster care benefits are property for purposes of the Fourteenth Amendment.

The Director nonetheless contends that plaintiffs lack a protectable interest in that property because they have no legitimate claim of entitlement to foster care benefits after the effective date of HMR Reform. In *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972), the Court explained that before an individual will be deemed to have a property interest in a benefit, he must show "more than an abstract need or desire for it. . . . He must, instead, [establish] a *legitimate claim of entitlement to it*." (Emphasis added). Such a legitimate claim of entitlement, moreover, is "defined by existing rules or understandings that stem from an independent source such as state law." *Id.; see also Easter House v. Felder*, 910 F.2d

1387, 1395 (7th Cir. 1990) (en banc), *cert. denied*, 498 U.S. 1067 (1991). The Director does not contest that plaintiffs had a legitimate claim of entitlement to foster care benefits under Illinois law prior to the implementation of HMR Reform. He maintains, rather, that their interest cannot be judged under prior law, but only as of the July 1, 1995 effective date of the reforms. The Director argues that because the plaintiff children reside in homes that currently are unlicensed, they lack a legitimate claim of entitlement to foster care benefits under HMR Reform. Effectively, then, the Director is arguing that plaintiffs lack a protectable property interest because the State of Illinois eliminated any entitlement they may have had when it reformed its foster care system.

But that tautological argument misunderstands the due process jurisprudence of this court and the Supreme Court. Once a property interest has been created by a state, that interest may subsequently be eliminated, but only pursuant to constitutionally adequate procedures. *See Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985); *Logan*, 455 U.S. at 432. A state, in other words, may not defend against a due process claim, as the Director does here, by arguing that the plaintiff now lacks a protectable property interest by virtue of the very state action the plaintiff has challenged. *See Bennett v. Tucker*, 827 F.2d 63, 73 (7th Cir. 1987) ("a state may not deprive an individual of his or her property interest without due process, and then defend against a due process claim by asserting that the individual no longer has a property interest."). The Supreme

Court made a similar point in *Logan v. Zimmerman Brush Co.*, *supra*. There, the Court rejected the theory that a state legislature, as the creator of an entitlement, can also establish the procedures under which that entitlement can be forever lost. 455 U.S. at 431-32. The required procedures are a matter of federal law, the Court said, which "'are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action.'" *Id.* at 432 (quoting *Vitek v. Jones*, 445 U.S. 480, 491 (1980)). Any other rule, the Court explained, "would allow the State to destroy at will virtually any state-created property interest." *Id.* Thus, once a state has created a property interest, the adequacy of the procedures employed to deprive an individual of that interest must be judged in constitutional terms. *Id.; see also Vitek*, 445 U.S. at 490-91. Plaintiffs therefore have a legitimate claim of entitlement to the foster care benefits they were receiving prior to the implementation of HMR Reform, and we must determine whether the procedures employed to deprive them of that interest were constitutionally adequate.

The Director's argument regarding the second aspect of our inquiry is more powerful. The Director contends that even if these plaintiffs have a protectable property interest, the legislative process that led to the elimination of their benefits provided all the process that was due. *See Atkins v. Parker*, 472 U.S. 115 (1985).

Atkins involved a congressional amendment to the Food Stamp Act that reduced the percentage of earned income that could be deducted in determining eligibility for program participation. Because the amendment effectively increased the income reported by nearly all participating households, it "caused a reduction of benefits in varying amounts, or a complete termination of benefits, for families whose income placed them close to the border between eligibility and ineligibility." 472 U.S. at 118. When the State of Massachusetts attempted to implement the change, its food-stamp recipients argued that the State had provided them with deficient notice and had violated their due process rights by failing to apprise each household of the amendment's particularized effect. Although the lower courts agreed, the Supreme Court reversed, concluding that a particularized notice was not required because the legislative process provides all that is due when the benefit levels of a food-stamp recipient are so adjusted. *Id.* at 130; *see also Logan*, 455 U.S. at 432-33 *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915). The Director contends that this case which also involves a substantive change to the scope of a welfare benefit program, is indistinguishable from *Atkins*. According to the Director, then, *Atkins* compels the conclusion that the legislative process satisfied the State's Fourteenth Amendment responsibilities.

The district court distinguished *Atkins*, however, by focusing on the Supreme Court's observation that the Massachusetts legislative initiative applied across-the-board and did not involve

"the procedural fairness of individual eligibility determinations." *See Atkins*, 472 U.S. at 129. The district court emphasized that plaintiffs do not challenge the substance of the reforms adopted by the state legislature; indeed, they readily concede that the Illinois General Assembly may restrict foster care benefits to children in licensed homes. Plaintiffs, who all were receiving foster care benefits prior to the implementation of HMR Reform, challenge only the State's failure to provide them an opportunity to qualify under the new system before their benefits are eliminated. (*See* Dist. Ct. Mem. Op. at 31.) The district court believed that *Atkins* did not control plaintiffs' claim to individual determinations of eligibility for continued benefits under the altered program.

The Director contests this distinction, insisting that the plaintiffs in *Atkins* also sought individual determinations about the effect of a legislative change. Plaintiffs emphasize, however, that because *Atkins* involved an across-the-board change in the method of computing income, no individual eligibility determination could prevent or alter the reduction in benefits occasioned by the legislation. Even so, food-stamp recipients affected by the change could request a hearing and have their benefit levels frozen in the interim. 472 U.S. at 128, 131 n.35. Here, by contrast, HMR Reform merely adds an additional eligibility requirement (licensure) that most if not all approved and preapproved homes could meet if given an opportunity to do so. Plaintiffs therefore argue that whether or not a particular household can satisfy the additional requirement, and thereby

retain existing benefits, requires an "individual eligibility determination" under *Atkins*.[14]

Plaintiffs' argument finds support in the Ninth Circuit's recent decision in *Greene v. Babbitt*, 64 F.3d 1266 (9th Cir. 1995). There, the Chairman of the Samish Indian Tribe argued that the federal government violated the due process rights of

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[14] Plaintiffs therefore distinguish the many cases that have applied *Atkins* to legislative changes that eliminate or fundamentally alter a benefit system from those that add an additional eligibility requirement that current recipients are capable of meeting through further action. In each of the cited cases, as in *Atkins*, there was no action an affected individual could take to avoid the impact of the challenged legislation. Hence, there was no "individual eligibility determination" to be made. *See, e.g., Story v. Green*, 978 F.2d 60, 63 (2d Cir. 1992) (New York's repeal of exemption previously enjoyed by disabled veterans from a city's regulation of street peddling); *Rosas v. McMahon*, 945 F.2d 1469, 1475 (9th Cir. 1991) (amendment that increased the types of income to be included in determining eligibility for AFDC program); *Hoffman v. City of Warwick*, 909 F.2d 608, 619-20 (1st Cir. 1990) (repeal of state statute granting enhanced seniority to returning war veterans); *Slaughter v. Levine*, 855 F.2d 553 (8th Cir. 1988) (amendment providing that a family receiving nonrecurring lump-sum income (*e.g.*, an inheritance) is ineligible for AFDC benefits for the number of months that income would satisfy the family's standard of need); *Oliver v. Ledbetter*, 821 F.2d 1507, 1515-16 (11th Cir. 1987) (new regulation requiring that Old Age, Survivors, and Disability Insurance benefits received by one child must be included in calculating, for AFDC eligibility purposes, available income of co-resident sibling); *Gattis v. Gravett*, 806 F.2d 778, 780-81 (8th Cir. 1986) (amendment withdrawing "persons holding the rank of major and above" from personnel covered by state civil service provisions); *Frock v. United States R.R. Retirement Bd.*, 685 F.2d 1041 (7th Cir. 1982) (statute eliminating right to receipt of dual benefits under two federal programs), *cert. denied*, 459 U.S. 1201 (1983).

Tribe members when it ceased paying certain benefits on the ground that theirs was not a federally-recognized tribe. The federal-recognition requirement had been added by Congress in the early 1970s, when individual members of the Samish Tribe were already receiving federal benefits. 64 F.3d at 1269, 1274. The Tribe argued that the government could not eliminate the benefits of its individual members on this ground without providing a hearing to determine whether the Samish Tribe met the requirements for federal recognition. The Ninth Circuit noted that under *Atkins*, the legislative process generally provides all the process that is due when Congress alters the eligibility criteria for federal programs. *Id.* at 1273. Yet because Congress had only "narrowed eligibility for fundamental health and welfare benefits by conditioning eligibility on tribal recognition," the Ninth Circuit held that "the due process clause requires a meaningful hearing to determine whether those previously eligible can meet the new and narrowed requirements." *Id.* The protections of the Due Process Clause would be seriously impaired, the court observed, if the government were allowed "to cut off benefits without a hearing by creating new eligibility requirements and then summarily holding that current benefit recipients do not meet the new requirements." *Id.* (internal quotation omitted). Thus, once "Congress determined that tribal recognition was a prerequisite to benefits previously received on an individual basis, due process required the agency charged with administration of the requirement to afford a meaningful

hearing for those who would be deprived of benefits." *Id.* at 1274.

We find the circumstances here to be virtually indistinguishable from those in *Greene*. The plaintiffs here, like the individual Samish Tribe members in *Greene*, were receiving government benefits prior to a legislative change that imposed a new eligibility requirement. The effect of that change, both here and in *Greene*, was to eliminate (at least temporarily) the benefits of current recipients while they attempted to satisfy the new requirement. Although the Illinois General Assembly was as free as Congress to alter its benefit program by adding a new eligibility requirement, we agree with the Ninth Circuit that the Due Process Clause does not permit the State to withhold benefits without determining whether current recipients can meet the new requirement. *See Greene*, 64 F.3d at 1273. Just as the individual Tribe members in *Greene* were entitled to a hearing on the federal recognition question before the government could eliminate their benefits, plaintiffs here are entitled to a DCFS determination on the licensing question before the Director may deprive them of foster care benefits. The fact that the plaintiff children currently reside in homes that are not licensed is not controlling, just as the lack of federal recognition for the Samish Tribe did not control the analysis in *Greene*. In both cases, due process requires that the governmental agency provide current recipients the opportunity to establish eligibility under the new standards *before* their benefits may be eliminated. *Id.* at 1274. That is particularly true in this case, where the district court

found as a factual matter that DCFS is primarily responsible for the fact that plaintiffs currently reside in unlicensed relative homes.

We similarly agree with the Ninth Circuit that *Atkins* does not control in these circumstances. The Court in *Atkins* was careful to distinguish the legislative change there from one involving individual determinations of program eligibility. *See* 472 U.S. at 129. Indeed, the Court indicated that its conclusion would be different if the benefit reductions "were based on individual factual determinations, and notice and an opportunity to be heard had been denied." *Id.* at 131 n.35. There was no such factual determination in *Atkins* because the statutory amendment only required a simple calculation of household income under a new formula based on a static set of facts. That is not the case here, however, because HMR Reform merely imposes an additional eligibility requirement, which necessarily requires the State to determine whether existing recipients can meet the new requirement. Rather than affording plaintiffs that opportunity prior to terminating their benefits, DCFS made the blanket determination that all approved and preapproved relative homes do not satisfy the new requirement because they currently are unlicensed. *Cf. Greene*, 64 F.3d at 1273. Yet many of the affected homes could satisfy the new requirement if given an adequate opportunity. Indeed, many already have been approved by the State as meeting its licensing standards. They did not take the additional steps necessary to obtain a license only because the absence of a license had no effect on the foster care

benefits of resident children. We therefore hold that if a currently unlicensed home submits a timely license application, the Director may not terminate the benefits of resident children until DCFS has rendered a decision on the application. *See Greene*, 64 F.3d at 1273-74; *cf. Atkins*, 472 U.S. at 128, 131 n.35 (current benefit levels frozen if food-stamp recipient requested individual hearing).

Illinois has treated approved and preapproved relative homes differently in implementing HMR Reform, providing a transition process (albeit attenuated) to children in approved but not preapproved homes. Because children in both types of homes were eligible to receive benefits under Illinois law prior to HMR Reform, however, and may be equally capable of meeting the new licensing requirement, children in both types of homes are entitled to the same due process protections. We in any event conclude that the process provided to homes in both categories is constitutionally deficient.

First, HMR Reform provides a process under which approved homes may attempt to become licensed while resident children retain their former benefits. That process is fundamentally flawed, however, in that it sanctions the elimination of benefits on a specified date even where a home has submitted a timely license application and the Department has yet to render a decision. The Due Process Clause requires at the very least that benefits not be terminated unless and until DCFS considers and denies the application. *See Logan*, 455 U.S. at 434-35; *Penn Cent. Corp. v. United States R.R. Vest Corp.*, 955 F.2d 1158,

1161-62 (7th Cir. 1992) (due process rights of railroad violated where only available predeprivation process could not provide effective relief before the property interest would be lost); *see also Carey v. Quern*, 588 F.2d 230, 232 (7th Cir. 1978) ("due process requires at least that the assistance program be administered in such a way as to insure fairness and to avoid the risk of arbitrary decision-making."). We agree with the district court, then, that the benefits of children in approved homes may not be eliminated unless DCFS has processed and denied, after adequate consideration, the license applications of the homes in which they reside.

Children in preapproved homes are provided even less protection under HMR Reform. Indeed, because no transition process was provided to these children, the Director eliminated their benefits in July of this year, after enforcement of the district court's injunction was stayed. But as explained above, the Due Process Clause requires that like approved homes, preapproved homes be provided the opportunity to have a license application considered and determined on its merits before the benefits of resident children may be eliminated. The Director has therefore violated the due process rights of these children by discontinuing their benefits without providing such an opportunity.

C. Relief

To remedy the violations it identified, the district court first enjoined the Director from terminating the foster care benefits of children in approved and preapproved relative homes

until it had provided those homes an opportunity to have a license application determined on its merits. The district court intends to require, moreover, that DCFS provide to relative caregivers an additional notice of the changes effected by HMR Reform and to include a license application with that notice. Relative caregivers would then be given thirty-five days from the date of mailing to submit the application, with resident children retaining their benefits until the Department renders a decision. The court's order would also require the Director to make a caseworker available for questions and to provide other assistance to relative caregivers.[15] The Director maintains that the details of this injunction violate principles of comity and federalism and that he, and not the district court, should get first crack at implementing HMR Reform within the parameters of the Constitution and federal law.

It is true that in any given situation, there may be more than one permissible method of remedying a constitutional

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[15] As far as we can tell, the district court intends these procedures to apply to approved and preapproved relative homes alike. We are unsure that further notice is required for approved relative homes, however, as they already were notified of the transition process available to them and were provided with a license application. Indeed, the Director's counsel told us at oral argument that by July 1, 1996, approximately ninety percent of approved homes had applied to be licensed. We also did not understand plaintiffs to have argued below that the notice provided by the Department to approved homes was inadequate. Because the notice requirement of the district court's injunction will in any event be stricken for the reasons explained in the text, we shall leave resolution of this issue to the parties and the district court.

violation, whether it arises under the Due Process or the Supremacy Clause. *See Jefferson v. Hackney*, 406 U.S. 535, 546-47 (1972); *Jenkins v. Bowling*, 691 F.2d 1225, 1234 (7th Cir. 1982). The district court has articulated what it considers to be the minimum relief necessary to satisfy due process and the 1976 judgment. (Dist. Ct. Mem. Op. at 37.) As a result of this appeal, however, the district court has not yet entered a final decree, and before doing so, it intended to consider the Director's objections to the relief it had proposed. (*Id.* at 38.) Although the requirements of the district court's order strike us as reasonable, at least as applied to preapproved homes, we agree that the Director should be afforded the first opportunity to propose a constitutional transition procedure. *See Pennington v. Didrickson*, 22 F.3d 1376, 1388 (7th Cir. 1994) (task of federal courts is to determine whether state statutory scheme conflicts with the Constitution or federal law, and not to mandate a more compatible alternative), *cert. denied*, 115 S. Ct. 613 (1994); *Jenkins*, 691 F.2d at 1233-34. The federal courts need only at this point decree that the current implementation plan is invalid and that the Director may not eliminate the foster care benefits of children in relative homes until he has provided those homes an adequate opportunity to become licensed. *See Association of Community Org. for Reform Now* (ACORN) v. Edgar, 56 F.3d 791, 797-98 (7th Cir. 1995); *Jenkins*, 691 F.2d at 1234. The district court will of course ensure that any alternative plan is consistent with our decision today.

D. Plaintiffs' Cross-Appeal

Plaintiffs have cross-appealed from the district court's refusal to require the Director to permit administrative appeals from adverse licensing decisions. In refusing to grant this request, however, the district court did not consider the issue on its merits, noting instead that the information provided by the parties to date was insufficient to enable the court to reach a definitive conclusion on the issue. The court therefore expressly limited the scope of its June 30, 1995 opinion and order to the legality of the transition process without deciding whether administrative appeals were in fact available under HMR Reform or were required as a matter of law. (*See* Dist. Ct. Mem. Op. at 25-26.) Although we have jurisdiction pursuant to 28 U.S.C. §1292(a)(1) over an appeal from an order denying an injunction, we believe the administrative appeal issue must be developed further in the district court, and decided on the merits there, before we should consider it on appeal. *See, e.g.*, Circuit Rule 50 (requiring district court to provide its reasons when entering an appealable interlocutory order). At present, there is nothing in the record to establish definitively whether or not the Director has provided all plaintiffs with the right to appeal an adverse licensing decision and whether he intends to continue to pay benefits during the pendency of such an appeal. The district court also has expressed no opinion on whether appeals and continued benefits are required under the Social Security Act or the Due Process Clause. Plaintiffs should further develop this issue before the

district court and obtain a definitive ruling on the merits there before bringing the issue to this court.

III. CONCLUSION

We agree with the district court that Illinois' transition to HMR Reform violates the due process rights of children residing in approved and preapproved relative homes. The transition also violates paragraph four of the 1976 judgment by denying benefits to children in approved relative homes. Plaintiffs are therefore entitled to an injunction that prohibits the Director from terminating their foster care benefits until he has provided them with an adequate opportunity to have a license application determined on its merits. The district court must nonetheless strike those portions of its order mandating an alternative means of implementing HMR Reform in order to permit the Director to propose his own procedure. With that exception, the injunction challenged in the Director's appeal is affirmed. We similarly affirm, at this time, the order denying a further injunction that is challenged in plaintiffs' cross-appeal. The parties shall each recover the costs they incurred in defending the other's appeal. The stay entered on October 10, 1995, is dissolved.

IT IS SO ORDERED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

United States Court of Appeals

FOR THE SEVENTH CIRCUIT
CHICAGO, ILLINOIS 60604

January 17, 1996

Before

Hon. Harlington Wood, Jr., Circuit Judge

Hon. Ilana Diamond Rovner, Circuit Judge

Hon. Terence T. Evans, Circuit Judge

No. 95-2575 & 95-2813

MARCEL YOUAKIM,	]	Appeal from the United
LINDA YOUAKIM, individually,	]	States District Court
and as foster parents,	]	for the Northern
and TIMOTHY ROBERTSON,	]	District of Illinois
and all others similarly situated,	]	Eastern Division.
	]	
Plaintiffs-Appellees,	]	
	]	
v.	]	No. 73 C 635
	]	
JESS MCDONALD, Director,	]	
Illinois Department of Children	]	
and Family Services,	]	
	]	**John A. Nordberg,**
Defendant-Appellant.	]	Judge.

ORDER

On consideration of the petition for rehearing with suggestion for rehearing en banc filed by defendant-appellant on December 15, 1995, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny the petition. Accordingly,

IT IS HEREBY ORDERED that the petition for rehearing with suggestion for rehearing en banc be, and the same is, hereby DENIED. The stay entered on December 21, 1995 is dissolved.

Honorable Frank H. Easterbrook did not participate in the consideration of this petition.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCEL YOUAKIM, et al.,	]	
	]	
Plaintiffs,	]	
	]	
v.	]	No. 73 C 635
	]	
	]	Judge John A. Nordberg
JESS MCDONALD, DIRECTOR, ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES,[1]	]	
	]	
Defendant.	]	

MEMORANDUM OPINION AND ORDER

On June 6, 1995, Governor Edgar signed P.A. 89-21, which was passed by the Illinois General Assembly on May 26, 1995. P.A. 89-21 includes statutory amendments authorizing, directing

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[1] Pursuant to Federal Rule of Civil Procedure 25(d), Jess McDonald, the Director of the Illinois Department of Children and Family Services, has been substituted as the Defendant in this suit for Jerome Miller, the Director of the Department of Children and Family Services at the time this suit was originally brought.

and implementing the Illinois Department of Children and Family Services' ("DCFS's") Home of Relative Reform Plan ("HMR Reform"). Plaintiffs, a class comprising of related foster parents and related foster children claiming to be eligible for equal foster care payments and ancillary benefits pursuant to Title IV-E of the Social Security Act, claim that the transition process from the current foster care regime to HMR Reform violates the express provisions of the Judgment Order entered in this case on August 25, 1976, Title IV-E itself and the Due Process Clause of the Fourteenth Amendment. Plaintiffs have filed a Motion to Adjudicate Director McDonald in Civil Contempt of the 1976 Order and for Remedial Sanctions and a Supplemental Motion for relief pursuant to 28 U.S.C. §§ 2201, 2202.

In light of the July 1, 1995 effective date of the HMR Reform legislation, the Court has held itself and the parties to a demanding schedule in this adjudication. Because the Court believes that it is important to have a ruling in this case before the legislation goes into effect, the Court has not had the opportunity to produce a full Memorandum Opinion and Order, but seeks to articulate in as much written detail as possible the basis for the findings of fact and conclusions of law that underlie its decision.[2]

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[2] The parties and the Court have been fortunate to have outstanding counsel working on this case. The attorneys demonstrated zealous advocacy and extraordinary professional skill. The Attorneys have prepared and presented in a remarkably short period of time a complete factual and legal presentation of their respective positions. The lawyers also demonstrated laudable coopera-

(continued...)

The Court has reviewed the motions submitted and the arguments of counsel, the exhibits received into evidence, all the testimony submitted to the Court in written and oral form, including written and oral direct, cross and re-direct examinations, detailed notes taken during the evidentiary hearing by the Court, the proposed findings of fact and conclusions of law submitted by the parties, the brief submitted by the amici curiae, the stipulations of fact submitted by the parties and a tape recording of the entire hearing. Where necessary, the Court made credibility determinations based on the witness' intelligence, ability and opportunity to observe, their memory and manner while testifying, any interest, bias or prejudice they may have had, and the reasonableness of their testimony in light of all the evidence presented in the case. The Court held an evidentiary hearing on June 15 and 16, 1995.

BACKGROUND

Some explanation of the background of the case is required to understand the arguments of the parties.

Before the initial litigation in this case, many years ago, the State of Illinois defined the term "foster family home" as "a facility of child care in residences of families who receive no more than 8 children unrelated to them . . . for the purpose

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[2](...continued)
tion, particularly in the production and presentation of the exceptional Stipulations of Uncontested Fact, which the Court has relied on in making many of its findings.

of providing family care and training for the children on a full time basis." Miller v. Youakim, 440 U.S. 125, 130 (1979). Thus, an individual providing family care and training to children related to the individual did not maintain a foster family home. Such children and caregivers were therefore ineligible for the federal foster care payments which were available through the states to foster family homes, even though a child would have been eligible for such payments if the child had been placed in the home of a non-relative. In 1976, a three-judge panel held that Illinois's practice of excluding relatives from the definition of foster family home conflicted with sections 601 and 608 of the Social Security Act and was therefore invalid under the Supremacy Clause of the United States Constitution. Miller v. Youakim, 431 F. Supp. 40, 45 (N.D. Ill. 1976).

As part of its ruling, the Court entered a Judgment Order. The Order enjoined the State of Illinois from enforcing any law or administrative policy or procedure insofar as it excluded any child or foster care provider from eligibility in the Title IV-E[3] program or denied the full benefits available under that program on the basis of a familial relationship between the provider and the child. Judgment Order, ¶ 4(a). The Order also required that Illinois pay full Title IV-E benefits to related foster children and parents if they were eligible to receive them. The District

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[3] At the time of the Order, Title IV-E did not exist. Foster care payments were made pursuant to the Aid to Families with Dependent Children program. Accordingly, the 1976 Judgment Order refers to AFDC-F payments. These payments are the equivalent of those currently provided under Title IV-E.

Court's conclusion that the Illinois statute violated the Supremacy Clause was affirmed by the Seventh Circuit, 562 F.2d 483 (7th Cir. 1977), and the Supreme Court, 440 U.S. 125 (1979), both with written opinions.

The instant litigation involves a dispute regarding the requirements of the 1976 Judgment Order. Plaintiffs claim that Defendant disfavors relative foster children and caregivers in the transition process between the old foster care system and HMR Reform. Plaintiffs contend that the transition process[4] established by the legislation violates the 1976 Order, the provisions of Title IV-E of the Social Security Act and the Due Process Clause of the Fourteenth Amendment. However, Plaintiffs do not challenge the authority of the State of Illinois to enact HMR Reform or any substantive portion of that legislation.

STIPULATED FACTS

DCFS is the Illinois state agency charged with investigating allegations of child abuse and neglect throughout Illinois and caring for children and families who are the victims of child

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[4] For the purposes of this Opinion, the Court defines "transition process" as the period between the effective date of HMR Reform and the point in time at which all applications for licensure from currently unlicensed foster caregivers have been decided by DCFS.

abuse and neglect.[5] If DCFS determines that a child is in imminent risk of harm or cannot be safely maintained with her family, DCFS make take immediate emergency custody of the child. Within two days of taking emergency protective custody, a hearing must be held in juvenile court to determine whether the child should be made a ward of the court and placed in DCFS guardianship. Children in the custody or guardianship of DCFS are placed in substitute care placements, including relative homes, non-relative homes, group homes, or institutions.

Children may be placed with relatives immediately by DCFS, even though the relative home is neither licensed nor approved as a foster home, as long as the relative home passes an initial "safety check." The Court will refer to this situation as placement in a "pre-approved" home.[6] In contrast, a child may be placed in a non-relative home only if that home has been licensed. Prior to HMR Reform, DCFS provided children placed in pre-approved homes the full foster care assistance of approximately $350 per child per month, despite the fact that the federal government did not reimburse Illinois under Title IV-E unless a related child was placed in a licensed or approved home. 42 U.S.C. § 672(c). Thus, from the point of view of the related foster care provider, there was no financial

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[5] This suit names Director McDonald in his official capacity only and is therefore merely a suit against DCFS itself. See Hill v. Shelander, 924 F.2d 1370, 1372 (7th Cir. 1991).

[6] The procedures constituting the initial safety check are listed at 89 Ill. Admin. Code § 335.202.

incentive to apply to be approved or licensed under the pre-HMR Reform foster care system. In addition, the difference between pre-approved, which means that the home is approved to take the child but not for reimbursement under federal programs, and approved, meaning that the State of Illinois was eligible to receive federal reimbursements under Title IV-E of the Social Security Act, was a distinction that understandably escaped related caregivers. The bottom line, however, is that many caregivers do not know whether or not they are "licensed" or "approved" as opposed to "pre-approved," a distinction which affects their rights in the transition to HMR Reform.[7]

Children in DCFS custody or guardianship are assigned a case worker, who may be a DCFS employee or may be assigned through a private child welfare agency, such as Catholic Charities. If a child's case is assigned to one of the sixty-seven private welfare agencies doing work for DCFS, the agency not only provides a caseworker to manage the case, but also is responsible for shepherding the family through the licensure or approval process.[8] As of April 30, 1995, 47,007 children were in foster care via DCFS placements. Private welfare agencies managed 31,596 of those children.

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[7] See, e.g., Grimes Direct, p. 9; Campbell Direct, p. 3; Crawford Direct, p. 3; Sumner Direct, p. 7.

[8] Some private welfare agencies are "approval only," meaning that DCFS has not granted them the authority to participate in the licensing process at all. Foster caregivers assigned to those agencies therefore had virtually no opportunity to be licensed.

Prior to HMR Reform, foster children in Illinois who lived in private homes were categorized by the State in one of three groups. The children either lived in a licensed home, an approved home,[9] or a pre-approved home, with the pre-approved category being divided between those with applications for approval pending and those without. All children residing with non-relatives must live in licensed homes, as an unrelated foster parent could not, and can not under HMR Reform, care for a child unless the foster home has been licensed. The "approved" category was created in 1986, in part to make it easier for DCFS to place children in relative homes. As the Court has noted, DCFS may place children in the home of a related person immediately after the child is removed from her original home so long as the relative satisfies an initial safety check. Relatives may then apply to have their homes approved or licensed.

A summary of the status of the 26,368 children in DCFS custody residing in relative homes as of April 30, 1995 (of the total of 47,007 children involved with DCFS) is presented here.

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[9] The State of Illinois established the "approved" category in 1986 with the promulgation of 89 Illinois Administrative Rule 335. Rule 335 provides that the approval standards:

> are substantially the same with regard to the safety, health and welfare of children as those promulgated for licensure of unrelated foster family homes pursuant to the Child Care Act of 1969.

89 Ill. Admin. Rule 335.102. Rule 335 was abolished by the HMR Reform.

	Approved or Licensed	Pending	No Appli-cation	Denied	Total
DCFS	2,027	1,086	5,402	11	8,526
Private Agency	9,507	4,766	3,544	25	17,842
Total	11,534	5,852	8,946	36	26,368

Of the 11,534 children in the "Approved or Licensed" category, only 308 are in licensed homes. DCFS receives federal Title IV-E funds only for those children in licensed and approved homes, although DCFS has continued to pay the full foster care rate of approximately $350 per child per month to children in the "Pending" and "No Application" categories without federal assistance.

The statistics with respect to the number of relative foster care homes in each category as of April 30, 1995 are similar to those with respect to the number of children, as demonstrated by this table.

	Approved or Licensed	Pending	No Appli-cation	Denied	Total
DCFS	1,051	681	3,182	7	4,921
Private Agency	4,005	2,935	1,994	10	8,944
Total	5,056	3,616	5,176	17	13,865

Of the homes that were Approved or Licensed, only 182 were licensed. From both tables presented, it is apparent that the private agencies have done a substantially better job approving and licensing homes than DCFS (44.8% of private agency homes approved or licensed; 21.4% of DCFS homes), despite the stated DCFS policy to actively pursue approval or licensure.

Prior to HMR Reform, relatives were favored by DCFS for foster child placements. DCFS actively recruited relatives as foster care providers. In 1986, DCFS created the "approved" category, in part to make it easter for DCFS to place foster children with relative caregivers. Between the promulgation of 89 Ill. Admin. Code § 335 (establishing the approval category) and HMR Reform, DCFS's preference for relative caregivers

was consistent with State law. See 20 ILCS 505/7(b) (repealed by HMR Reform). Furthermore, to the extent DCFS encouraged relative caregivers to apply to be approved or licensed, DCFS usually encouraged the approval process, which was easier for both DCFS and the family involved.

DCFS has struggled to carry out it responsibilities to the people of Illinois, due in large part to the enormity of those responsibilities. The number of children in DCFS custody has nearly doubled in the last four years, rising from 23,700 in June, 1991 to 47,000 as of April 30, 1995. Similarly, the number of children in state custody who are placed with relative care givers increased from approximately 5,500 in June, 1988 to over 25,700 in January, 1995, an increase of 367%. According to DCFS, this astronomical growth in relative care was primarily caused by a state law which established a preference for relative caregivers (and was repealed as part of HMR Reform), a broad definition of "neglected children" which included children living with relatives in the absence of a biological parent, slower rates of discharge from relative homes and the disparity between the payments available to foster parents caring for relatives and those avaiilable to non-foster parent caregivers who relied solely on other kinds of public assistance, including Aid to Families with Dependent Children ("AFDC"). In addition, the growth in relative foster care is partially due to the fact that DCFS sought out or solicited relative caregivers.

The cost of maintaining DCFS is high, particularly because Illinois provides the full foster care rate of payment to foster children even in cases where the federal government does not

partially reimburse the State for doing so, such as in the cases where a relative cares for a child but does not maintain an approved or licensed home. Hawaii is the only other state that pays foster care rates regardless of the eligibility for Title IV-E reimbursements. DCFS estimates that the State of Illinois lost $16 million in federal funds in fiscal year 1992 due to its policies regarding relative foster care payments. As the Court has noted, much of this loss was caused by the State's inability to license or approve, and therefore qualify for Title IV-E reimbursements, many of the relative foster homes. Part of this problem is due to the fact that relative caregivers lack a financial incentive to pursue licensure or approval in the pre-HMR Reform system as their benefit remains constant regardless of their status. Part of the problem also lies with administrative difficulties at DCFS. For example, DCFS and the private agencies responsible for licensing and approval of relative foster homes have lost applications filed by some foster parents. DCFS claims to have introduced steps to increase its administrative efficiency, such as the introduction of new fingerprint reading equipment which will supposedly reduce the time it takes to consider an application for licensure, but no evidence indicating any measurable improvements was submitted to the Court.

The HMR Reform at issue in this litigation is a response to these, and other, problems. Governor Edgar first announced HMR Reform on March 1, 1995. For the purposes of this litigation, three main components of HMR Reform are critical. First, HMR Reform eliminates the "approval" category for foster family homes. Second, Illinois will no longer pay the foster

care rate to homes with applications pending. Therefore, under HMR Reform, which is effective July 1, 1995, foster children will receive foster care payments from DCFS only if they are placed in a foster family home that is licensed under the terms of the Illinois Child Care Act of 1969.[10] Third, DCFS will not provide an administrative appeal to those applicants for licensure who are rejected.

After July 1, 1995, the licensing requirements under HMR Reform are the same for relative and non-relative caregivers and slightly more stringent than those in place prior to HMR Reform. Furthermore, HMR Reform changes the prior "official" policy of requiring foster care providers to apply for approval or licensure as a condition to keeping a child.[11] Under HMR Reform, the caregiver has the option to pursue a license or not. Therefore, a caregiver who is not capable of becoming licensed may still have a child placed in this or her foster home, but the caregiver will not receive foster care payments.

Those homes that are already licensed will not have to re-apply until their current licenses expire, despite the changes

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[10] There is one exception. Relative caregivers who, as of July 1, 1995, are approved under the prior approval rules at 89 Ill. Admin. Code § 335 and have submitted an application for licensure postmarked on or before June 30, 1995, will continue to receive foster care payments until DCFS makes a decision on their application or September 30, 1995, whichever comes first.

[11] In light of the fact that the percentage of relative homes that became approved never exceeded 66%, it is clear that this policy was rarely, if ever, enforced.

in the substantive licensing requirements. Those homes that are not yet licensed, however, which are mostly relative homes, must apply for and obtain a license to preserve their foster care payments beyond September 30, 1995, or in many cases, beyond July 1, 1995. For those foster children and foster care providers who will lose foster care payments as of July 1 or September 30 due to the implementation of HMR Reform, the amount of the loss will depend on the number of foster children involved. Although foster care payments will be eliminated for all but licensed homes, the State will continue to provide assistance to unlicensed homes via the Department of Public Aid and the Aid to Families with Dependent Children programs. Because these programs utilize an "economy of scale" theory, the payments increase at a decreasing rate for each additional child involved. For example, for a single foster child in Cook County, an unlicensed relative caregiver will receive $252 per month, or 72% of the approximately $350 per month they had received as a foster parent. An unlicensed foster home with eight children (the statutory maximum) would receive $1,165 per month, or 42% of the approximately $2,800 it would have received in the foster care program.[12] Of course, a relative caregiver may

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[12] Payments made to unlicensed caregivers will be made at a level to insure that foster children in unlicensed homes receive 100% of the Department of Public Aid's "Standard of Need," which is periodically calculated. It is important to note that to reach 100% of the Standard of Need, DCFS will supplement the payments made under the AFDC program, as many children who participate solely in AFDC do not receive 100% of the Standard of Need.

receive the full foster care benefits upon receiving a license as a foster care provider. The foster care payments do not incorporate economies of scale because obtaining and maintaining a license entails significant fixed costs, including maintaining certain housing standards. According to DCFS, the additional requirements placed on licensed foster homes, including having a telephone, a satisfactory water supply, and undergoing foster care training as well as a criminal check, justify the additional payments made to licensed caregivers as opposed to those who have merely passed the safety check.

DCFS began the implementation of HMR Reform by holding briefings for agencies and advocates in March, 1995. In April, 1995, DCFS provided current relative caregivers with initial written notice of the HMR Reform Plan. On April 28, 1995, DCFS issued a second notice of HMR Reform, including an application for licensure in notices sent to approved homes and homes with applications for approval pending. On approximately June 12, 1995, DCFS issued another notice to relative caregivers. This time, however, separate notices were sent depending upon whether the home was approved, pre-approved with an application pending, or pre-approved without a pending application.[13] These three notices were the only notice of HMR Reform

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[13] It is unclear from the stipulations filed by the parties how DCFS determined whether an application was pending. The stipulation indicates that which notice was sent depended upon whether DCFS "considered" an application to be pending.

(continued...)

sent to relative caregivers. Applications for licensure were not sent to pre-approved caregivers who did not have an application for approval pending. These care givers were instructed to obtain applications from their caseworker.

Many applications for licensure filed by relative caregivers before July 1, 1995 will not be decided by September 30, 1995. As a result, many foster caregivers will lose full foster care benefits at that time. Under HMR Reform, some of those applicants, as well as some of those who lost benefits as of July 1, 1995, will lose benefits even though they satisfy the licensure requirements under HMR Reform. In such cases, DCFS will not pay benefits retroactively.

DCFS intends to notify applicants for licensure of its decision with respect to their application by mail. If an application is rejected, the notice will include a written reason for the rejection. Under HMR Reform, there is no right to an appeal of an unfavorable decision. Appeals are available in only two situations: (1) to those homes that lose benefits and claim that the loss is the result of a DCFS mistake related to whether or

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[13](...continued)

One of the elements of HMR Reform is the establishment of a definition of "pending." Previously, no official definition existed, but DCFS considered an application "pending" solely upon the submission of a written application form. Under HMR Reform, DCFS will not consider an application for licensure to be pending until certain items are submitted. In light of this new definition, the Court cannot determine whether notices were sent pursuant to the pre-HMR Reform policy, the HMR Reform definition, or some other determination of pending used exclusively for this purpose.

not the home is already licensed; and (2) to those approved homes who lose benefits and claim that the loss is the result of a DCFS mistake related to whether an application for licensure was made in time (by June 30, 1995) to preserve benefits until September 30 or until a determination by DCFS, whichever occurs earlier.

The financial implications of HMR Reform are significant. DCFS estimates that HMR Reform will result in a net savings to the State of Illinois (and net loss to benefit recipients) of $44.4 million, consisting of $60.8 million in savings at DCFS offset by $16.4 million in increased cost to the Department of Public Aid.

ADDITIONAL FINDINGS OF FACT

In light of the nearly comprehensive nature of the factual stipulations submitted by the parties, the Court needs to make only these additional findings of fact.

First, the Court finds that prior to HMR Reform, the licensing process was not equally available to both relative and non-relative foster homes. This conclusion is supported by DCFS's admission that nine of the sixty-seven private agencies have been authorized to conduct approval only studies. Def.'s Resp. to Pl.'s Inter., p. 10. For the foster homes approved by these agencies, no opportunity for licensure was ever presented. Furthermore, because both licensed and approved homes received full foster care benefits, and because approval was less intrusive and had fewer requirements than licensing,

approval was easier for both the foster care family and DCFS staff or the private agency assigned to that family. Morsch Direct, p. 10 ("consistent with the Reid Consent Decree and [DCFS] practice, nearly all relatives were processed through the approval, rather than the licensing, process"). This finding of fact is supported by the statistical evidence. As of April 30, 1995, only 1.2% of all related children in foster care resided in licensed homes, while 42.6% of such children lived in approved homes. In addition, 22.2% of the pre-approved homes had applications for approval pending. With respect to number of homes, the evidence is similar. As of April 30, 1995, 1.3% of all homes with related children were licensed while 35.2% were approved. Homes with pending applications for approval accounted for 26.1% of the total number of homes with related children.

Second, the Court finds that DCFS will be unable to render decisions on the applications for licensure that will be pending on July 1, 1995 in time to prevent the deprivation of benefits to many applicants who satisfy the requirements for licensure. On the record before it, the Court is unable to reasonably estimate the time DCFS will need to render decisions on the applications for licensure that will be filed by relative approved caregivers as a result of HMR Reform. Plaintiff's expert, Mary Grimes, testified that it takes approximately six months to complete the licensure process. DCFS has a policy that a decision to issue a license on an application should be made within seventy-five days of the time the application is filed. However, DCFS statistics indicate that only 19.3% of all licens-

ing applications in Cook County in fiscal 1994 were licensed within seventy-five days. Pl.'s Ex. 6 at T316. In private agencies in Cook County during the same time period, 36.8% of the licensure applications were determined within seventy-five days. Pl.'s Ex. 6 at T384. Plaintiffs' witnesses testified to long time periods and various difficulties involved in processing applications. See Grimes Direct, pp. 7, 9, 20, 22-23, 25; Grimes Supp. Direct, p. 2; Stidhum Direct, p. 3; Sumner Direct, p. 6-7; Tate Direct, p. 4; Walton Direct, p. 4. The substantive requirements for licensure have not been diminished by HMR Reform. Defendant submits evidence that the process has been streamline and benefits from new technologies since the statistics provided above were developed. However, Defendant has not produced any evidence of any actual improvements in the time it takes, on average, to process an application for a license. Plaintiffs' witnesses testified to problems in obtaining licensure applications and counseling from caseworkers. Under the new HMR Reform rules, an applicant must receive six hours of foster care training, further delaying the application process. Accordingly, the Court concludes that the average period to process a completed licensure application will be in excess of ninety days.

Third, some of the relative foster children and care providers who are currently receiving full foster care benefits as approved homes or because they have applications for approval pending will lose those benefits under HMR Reform transition schedule despite the fact that they currently meet the requirements for licensure and will eventually be licensed. This conclusion is

based in large part on the definition of "approved" in 42 U.S.C. § 672(c), which defines "foster family home" as:

> a foster family home which is licensed by the State in which it is situated or has been approved, by the agency of the State having responsibility for licensing homes of this type, as meeting the standards established for such licensing.

This definition, under which the State of Illinois created the approved category in 1986, indicates that a home must meet licensure standards to be approved. Furthermore, because DCFS and the private agencies providing services to foster children and caregivers have channelled foster homes towards the approved category rather than the licensed category, the Court concludes that it is a certainty that many approved homes meet the standards for licensure.

Fourth, a substantial number of relative foster care homes that are only pre-approved will lose full foster care benefits under the HMR Reform transition schedule despite the fact that they currently meet or are able to meet the requirements for licensure and will eventually be licensed. Fifth, no non-related foster care children and caregivers who are currently receiving full foster care benefits will lose those benefits under the HMR Reform transition schedule.

ANALYSIS

Plaintiffs argue that the transition from the pre-HMR Reform system of providing public assistance to relative foster children

and relative foster caregivers violates the Judgment Order entered in 1976 in this case, Title IV-E of the Social Security Act and the Due Process Clause of the Fourteenth Amendment. The Court will consider each argument in turn.

I. THE JUDGMENT ORDER

As a result of the District Court's conclusion, in 1976, that Illinois' statutory definition of "foster family home," which excluded relative caregivers, was in conflict with the provisions of the federal Social Security Act, a Judgment Order was entered to provide the Plaintiffs and members of the Plaintiff class full and equitable relief. Plaintiffs now claim that HMR Reform violates that Judgment Order. For the purpose of this litigation, the operative paragraph of the Judgment Order is paragraph 4, which provides in part:

> Defendants, their agents, employees and all other persons in active concert with them are enjoined from:
>
> (a) enforcing [Illinois law] and all implementing administrative policies and procedures, insofar as they exclude from eligibility, or deny in full [Title IV-E] payments or ancillary benefits to, foster children living in foster homes maintained by related foster parents, and to these related foster parents, when such children and such parents are otherwise eligible for such payments and benefits;

> (b) failing to pay full [Title IV-E] payments to foster children living in foster homes maintained by related foster parents, and to those related foster parents, when such children and parents are otherwise eligible for such payments.

Judgment Order, ¶ 4. Plaintiffs argue that HMR Reform Plan consists of Illinois law and administrative policies and procedures that exclude relative foster children from Title IV-E benefits and deny such benefits to them on account of their relationship to their foster caregiver. Plaintiffs further argue that the Supreme Court decision in Youakim bolsters the conclusion that the State may not treat foster children differently on account of a family relationship with the foster care provider. The Supreme Court wrote, "Congress intended no distinction between related and unrelated foster homes." Youakim, 440 U.S. at 135. Therefore, the State of Illinois was precluded from establishing a more narrow entitlement to benefits than Congress had created. Id.

Defendant acknowledges that it may not distinguish between relative and non-relative foster care homes when providing benefits pursuant to a federal program. Defendant argues, however, that it is merely distinguishing between licensed homes and unlicensed homes, a line that it is unquestionably permitted to draw. Defendant argues that the language of the Judgment Order prohibits disparate treatment of related and non-related foster children only to the extent they are "otherwise eligible for benefits." Because the State has the power to determine the eligibility criteria, Defendant argues that treating non-licensed

foster homes differently than licensed foster homes is permissible under the Judgment Order. Defendant also points out that relative caregivers may apply for a license subject to the same requirements as non-relatives.

Although federal law does provide that "approved" or "licensed" homes are eligible for Title IV-E benefits, 42 U.S.C. § 672(c), witnesses for both sides testified that federal law does not require the establishment or maintenance of a category of "approved" foster homes. Thus, the State may elect not to "approve" any more foster homes without running afoul of the Judgment Order.

The situation here, however, is more complicated. In the pre-HMR Reform system, the State of Illinois created a distinction without a difference in that the distinction between a licensed home, an approved home, and a pre-approved home made no difference to the amount of funds or services a relative foster home could obtain.[14] Partially because this distinction made no difference to the funds received by the foster children and caregivers, DCFS field staff and private agency case workers advised and channelled relative caregivers towards the approval category rather than licensure. Approved homes have enjoyed full foster care benefits ever since. Essentially, DCFS, through

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[14] The Court acknowledges that the distinction between licensed or approved and pre-approved was important to the State in that federal reimbursements were available only for licensed and approved homes. The caregiver and the child, however, undoubtedly did not know of this distinction, and in any event the distinction was meaningless as they still received full foster care benefits.

HMR Reform, retroactively renders the distinction between licensure and approval, which was previously solely a matter of form, a matter of critical substantive importance. By doing so, DCFS is deliberately disfavoring relative caregivers.

Under HMR Reform, the relative caregivers are placed in an impossible situation through the actions of DCFS. They no longer qualify for benefits due to their approved status and there is simply no way that DCFS will be able to process all the applications for licensure in time to prevent the loss of substantial foster care benefits to these homes. Because they face a loss of foster care benefits which they are powerless to prevent, relative caregivers are disfavored when compared to non-relatives under HMR Reform. Non-relatives, who were not subject to DCFS's channelling practice, do not face this difficulty. To the contrary, they were required to be licensed from the start. Both relative and non-relative caregivers will remain responsible for the care of the children placed in their homes, although the relative caregivers will be expected to provide this same care at a lower rate of compensation.[15] To

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[15] This aspect of HMR Reform raises fundamental issues of fairness as well as issues of disparate treatment. DCFS contends that the rate of foster care payments is set partially to compensate foster care providers for the fixed costs of meeting the licensure requirements. For those relatives who received full benefits as approved homes and have applied for licenses in response to HMR Reform, full foster care payments will be denied them while DCFS processes their application. During this period, the family will be required to continue to incur the fixed costs of maintaining a licensed facility in order to keep their application valid, even though the higher foster care payment will not be available to defray these costs.

the extent DCFS argues that the dilemma is caused by the relative's failure to obtain a license, DCFS has caused that state of affairs. Because DCFS is required by the Judgment Order to refrain from discriminating against relative foster children and caregivers on the basis of the familial relationships between them, DCFS has a concomitant duty to insure that HMR Reform does not create disparate treatment of relative foster children based on prior policies and practices of DCFS itself.

The Court concludes that the combination of the DCFS practice of channelling relative caregivers into the approved (or pre-approved), rather than licensed, status and the elements of HMR Reform which place critical importance on the possession of a license disfavor relative caregivers irrespective of their eligibility for full foster care benefits. The Court further concludes that the State of Illinois and DCFS have not taken any action to mitigate the discriminatory effect HMR Reform will have on relative children and caregivers. Accordingly, relief is appropriate under the Judgment Order.

Although the Court finds that HMR Reform violates the Judgment Order entered in this case, it does not find the Director in civil contempt. The standard for civil contempt in the Seventh Circuit is high. In D. Patrick, Inc. v. Ford Motor Co., 8 F.3d 455 (7th Cir. 1993), the court explained that a party may be held in contempt only for behavior which is clearly prohibited by a court order "within its four corners." Id. at 460 (quoting United States v. ITT Continental Baking Co., 420 U.S. 223, 237 (1975)). The violation of the Judgment Order in this case arises over a period of years from the combination of prior DCFS

practices and the HMR Reform legislation, neither of which independently violated the Judgment Order. As a result, the Court is unwilling to find the Director in contempt for the result of independent actions by his department and the State of Illinois. This is not to say that the Court should not grant relief to Plaintiffs. Paragraph 12 of the Judgment Order states, "This Court shall retain continuing jurisdiction over this action." Judgment Order, ¶ 12. Thus, the Court still has the authority to enforce the Judgment Order to prevent this discrimination. The Court will discuss the appropriate relief to which Plaintiffs are entitled later in this opinion.

II. TITLE IV-E

Plaintiffs argue that the transition process violates Title IV-E of the Social Security Act and its implementing regulations. Plaintiffs argue that, because Title IV-E allows full foster care payments to homes that are either "licensed" or "approved," the State may not disfavor those homes which are approved rather than licensed. Plaintiffs contend that DCFS has created a disparate burden on relative foster homes by eliminating the approval category, thereby automatically depriving the vast majority of relative caregivers of Title IV-E funds. As the Court has already explained in its discussion of the Judgment Order, DCFS has treated relative caregivers less favorably than non-relative caregivers by channelling relative caregivers towards the approved category and then eliminating it. Full relief arising from this disparate treatment is available as a result of the

Court's conclusion that HMR Reform violates the Judgment Order.

To the extent Plaintiffs object to provisions of HMR Reform other than the transition process under Title IV-E, including the right of appeal from unfavorable licensing decisions, the Court considers those arguments to attack the substance of HMR Reform. The issues before the Court in this litigation are whether the transition process itself is unlawful. The Court issues no opinion with respect to the other provisions of HMR Reform. Specifically, the Court has not had sufficient briefing of Plaintiffs' argument regarding the availability of appeals from the denial of licenses under HMR Reform, in which they rely on a letter dated June 15, 1995 from Kay Willmoth, the Assistant Regional Administrator for Family Security for the Department of Health and Human Services. Willmoth states that "it is our view" that children living in homes that are pre-approved are entitled to hearings under section 671(a)(12) regarding the substance of the licensure decision as well as to determine whether their foster parents' application for licensure have been processed with reasonable promptness. Additionally, Willmoth states that children living in approved homes are entitled to the aforementioned hearings as well as the continuation of benefits while their licensure application is pending. In light of the date of Willmoth's letter, the parties have not had a complete opportunity to present argument on this point. Accordingly, the Court does not feel that it has enough information to rule on this issue.

The Court expressly limits the scope of its opinion in this matter to the legality of the transition process. Specifically, the Court limits its analysis to the questions of whether the transition process treats relative caregivers the same as non-relatives and whether the procedures by which the State intends to deprive relative caregivers of foster care benefits are constitutionally adequate.

III. DUE PROCESS

Plaintiffs argue that the transition from the pre-HMR Reform system to the HMR Reform systems deprives them of property without due process of law. Plaintiffs contend that they have a property interest in the foster care payments which they received prior to HMR Reform. Additionally, they claim that the State may not deprive them of those benefits without granting them the opportunity to establish that they will qualify for the same benefits under the new HMR Reform program. Defendant argues that Plaintiffs were granted all the process they are entitled to by the passage of P.A. 89-21 by the Illinois General Assembly.

The Due Process Clause of the Fourteenth Amendment provides that no State shall deprive any person of property without due process of law. U.S. Const. amend. XIV. Therefore, in cases asserting the unlawful deprivation of property, the Court must complete a two-part inquiry. First, was the claimant deprived of a protected property interest and,

if so, what process was his due. Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982).

Foster care benefits, like the food stamp benefits at issue in Atkins v. Parker, 472 U.S. 115 (1985) and the welfare benefits at issue in Goldberg v. Kelly, 397 U.S. 254 (1970), "are a matter of statutory entitlement for persons qualified to receive them." Goldberg, 397 U.S. at 262-63. Such entitlements are property which is protected by the Due Process Clause. Id. Accordingly, the procedures that are employed in determining whether an individual may continue to participate in the statutory program must comply with the commands of the Constitution. Atkins, 472 U.S. at 128 (citing Goldberg, 397 U.S. at 262-63). Neither party contests that the benefits themselves are constitutionally protected property.[16]

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[16] Defendant argues that Plaintiff has no constitutionally protected interest in a transition period or in a "reasonable eligibility process" because an interest in process alone is not protected by the Fourteenth Amendment. It is true that the Due Process Clause does not recognize an interest in process as property. Doe v. Milwaukee County, 903 F.2d 499, 502-03 (7th Cir. 1990). However, contrary to Defendant's argument, Plaintiffs do assert a protected property interest here. Plaintiffs argue that they have an interest in the continuation of the foster care payments that were being made to them under the prior system until they have a fair and reasonable opportunity to apply for these same benefits under HMR Reform. Plaintiffs claim an interest in the dollars they were receiving prior to HMR Reform and in the continuation of those benefits under HMR Reform. Welfare benefits are property for the purpose of the Fourteenth Amendment. Goldberg v. Kelly, 397 U.S. 254 (1970). The foster care payments here are indistinguishable from the welfare benefits in Goldberg for the purpose of

(continued...)

Defendant asserts, citing Atkins, that the Illinois legislature provided all the process that was due for a change in the scope of the foster care public assistance in Illinois. It is undisputed that a legislature may reduce in mass the benefit levels provided to a welfare recipient without violating the Due Process Clause. Logan, 455 U.S. at 432-33 (citing cases). In such cases, the legislative determination provides all the process that is due. Id. at 433. In Atkins itself the Supreme Court considered whether recipients of public assistance had a constitutional right to process before an amendment reducing the level of their benefits could be implemented. Congress had increased the percentage of an applicant's income that would be considered by the Department of Agriculture when calculating the amount of food stamp assistance to which the applicant was entitled. Atkins, 472 U.S. at 117-18. Plaintiffs argued that they had a constitutional right, pursuant to the Due Process Clause, to

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[16](...continued)
this analysis.

Defendant suggests that Plaintiffs have not been deprived of their interest in the foster care payments because they can apply for a license and, if successful, obtain full foster care benefits. However, as the Supreme Court made clear in Logan, "[w]hile the legislature may elect not to confer a property interest, . . . it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards." Logan, 455 U.S. at 432 (quoting Vitek v. Jones, 455 U.S. 480, 490-91 n.6 (1980)). Thus, Defendant cannot rely on the fact that it is now treating the Plaintiffs just like new applicants for a foster care license. Having created a property interest, Defendant has taken on the obligation of procedural fairness if he seeks to deprive the Plaintiffs of it.

advance notice of the effect the statutory amendment would have on them. The Court immediately noted that Atkins involved a legislatively mandated substantive change in the scope of an entire program, not individual eligibility determinations. Id. at 129. As such, the Court noted that the Due Process Clause imposes no substantive limit on Congress's authority to make substantive changes in the law of public benefits. Id. (citing Richardson v. Belcher, 404 U.S. 78 (1971)). The Court then held that legislative process provided all the process to which the plaintiffs were entitled. Atkins, 472 U.S. at 129-30 ("A welfare recipient is not deprived of due process when the legislature adjusts benefit levels . . . . The legislative determination provides all the process that is due.").

Defendant argues that this case is on all fours with Atkins, contending that HMR Reform is a mass change in the scope of foster care assistance in Illinois. From this, Defendant argues that the process provided by the Illinois General Assembly in debating and eventually passing HMR Reform provides all the process that is demanded by the Constitution. HMR Reform, however, is not merely a mass change in the scope of the foster care program. For many current recipients of full foster care benefits, HMR Reform is also a determination of their continuing ability to receive benefits. HMR Reform cuts off benefits to all those relative foster children and caregivers who had previously received benefits as a result of their approved status until DCFS renders a decision on their application for licensure. Therefore, unlike Atkins, where the benefit levels were reduced across the board, the benefit levels involved here may or may

not be changed by HMR Reform. HMR Reform, then, does not affect all participants in the pre-HMR Reform system, who are accordingly "property" holders, in the same manner. To the contrary, it discriminates against relative foster children and caregivers during this transition process.

HMR Reform does, in part, effectuate a mass change in the foster care program in Illinois. That portion of HMR Reform which represents a mass change, however, is not challenged by Plaintiffs in this litigation. Plaintiffs repeatedly disavow any attempt to challenge the State's ability to change the substance of the foster care program in the manner conceived in HMR Reform. The HMR Reform may clearly go forward with respect to individuals who have not yet entered the system or who maintain licensed foster homes. Furthermore, DCFS may immediately implement the portions of HMR Reform which change various substantive components of foster care, including the definition of neglect, the elimination of the "approved" category and many others, as long as those standards are applied equally to relative and non-relative caregivers.

The only part of HMR Reform that Plaintiffs do challenge is the elimination of benefits to relative foster children and relative caregivers who qualified under the previous system but do not have an opportunity to qualify under the new system because DCFS has not provided a mechanism by which it can make that determination before the change in benefit payments is scheduled to take place. Accordingly, this case falls into the caveat in Atkins involving individual eligibility determina-

tions, as HMR Reform essentially deprives relative foster care families of continuing full foster care payments.

Having determined that Atkins does not apply to the dispute raised in this litigation, the Court must still determine whether Plaintiffs received the process to which they are entitled. Plaintiffs contend that the instant case is analogous to Logan, in which the Supreme Court held that, although a state may reduce or terminate state created property interests generally, it cannot create procedural barriers to a property holder's ability to assert his rights. Logan, 455 U.S. at 433-34. In Logan, the plaintiff alleged unlawful employment discrimination before an administrative Commission, as he was required to do under the state scheme. Id. at 426. The Commission was obliged, by statute, to act on his charge within 120 days. Id. The Commission inadvertently failed to do so. Id. The case eventually reached the Illinois Supreme Court, which held that the Commission's failure to investigate plaintiff's charge within the required time period destroyed his cause of action, even though the Commission's failure to act was entirely out of plaintiff's control. Id. at 427. The Illinois Supreme Court held that no Due Process issue was presented because the Illinois legislature had provided all the process that was required when it passed the 120 day requirement. Id.

The Supreme Court of the United States unanimously reversed, holding that the Fourteenth Amendment requires an opportunity, granted at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case. Id. at 437. Because the plaintiff's cause of action, his property,

was deprived in a random manner, without granting him an opportunity to present the merits, due process was lacking. Plaintiffs argue that HMR Reform does exactly that to their property, randomly destroying it without any regard to the merits of their claim for continued benefits.

As Logan establishes, procedures or systems that govern the administration of public aid programs must be fair and rational. States cannot create systems which arbitrarily deprive persons of property. In Carey v. Quern, 588 F.2d 230 (7th Cir. 1978), the Seventh Circuit wrote:

> In the context of eligibility for welfare assistance, due process requires at least that the assistance program be administered in such a way as to insure fairness and to avoid the risk of arbitrary decision making.

Id. at 232. In order to insure fairness, a party deprived of property by a change in the rules governing a government program must have a reasonable opportunity to present his case and have the merits fairly judged under the new rules. See Logan, 455 U.S. at 433. A state simply may not set up a system in which benefits are available to a class of persons, but it is impossible for any single person to demonstrate that they are entitled to continued benefits.

By providing that Plaintiffs' entitlement to full foster care benefits ends as of a particular date (either July 1, 1995 or September 30, 1995) unless DCFS acts on Plaintiffs' applications by that date (an event which the Court has found is very unlikely for most Plaintiffs), HMR Reform deprives Plaintiffs of their

property interests in continuing foster care benefits without the benefit of due process. The deadline date, on which Plaintiffs' property interest is destroyed is analogous to the 120 day deadline in Logan. Neither Plaintiffs here nor the plaintiff in Logan had any ability to expedite the process, their property interest was entirely in the hands of the State and the State is proceeding arbitrarily. Moreover, HMR Reform also established that no retroactive benefits will be paid, even where DCFS determines that the applicant was in continual compliance with the licensure requirements from the July 1 effective date. Thus no post-deprivation process is available either. In light of DCFS's practice of channelling related foster caregivers into the approved category rather than the licensed category, irrespective of their ability to qualify for a license, this system is arbitrary and unfair.

Just as the plaintiff in Logan was entitled to notice and a fair hearing before he was deprived of his property in the form of a cause of action, Plaintiffs here demand notice and a right to a fair consideration of their applications for continued benefits.[17] The Court agrees that the components of HMR Reform that deprive Plaintiffs of continued foster care payments without a fair adjudication of their claim of entitlement is unconstitutional.

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[17] It is important to recognize that Plaintiffs' applications for licensure are applications for a continuation of the benefits they have been receiving as long as they have been involved with DCFS.

IV. RELIEF

Having held that the transition period established by HMR Reform violates both the Judgment Order and the Due Process Clause of the Fourteenth Amendment, the Court must determine what relief is appropriate. The Court has the authority to grant relief necessary to modify and enforce the Judgment Order as a result of its continuing jurisdiction over that Order and as a result of the violation of the Due Process Clause pursuant to 28 U.S.C. §§ 2201, 2202. The Court's goal in fashioning this relief is to provide, consistent with the Fourteenth Amendment, "an opportunity granted at a meaningful time and in a meaningful manner, for a hearing appropriate to the nature of the case." Logan, 455 U.S. at 437.

In the Court's opinion, the denial of due process can be remedied by allowing all relative foster caregivers, who received foster care benefits prior to HMR Reform, an opportunity to have their application for licensure determined on its merits before their benefits can be reduced. This relief would rectify the adverse disparity between relative and non-relative caregivers so that the relative caregivers, without being penalized for DCFS's prior practice of channelling non-relatives into a different category than relatives, would be granted or denied a license based on the same requirements as the non-relatives face. In addition, the opportunity for hearings on the merits of Plaintiffs' applications, assuming that the hearings are preceded by sufficient notice, will satisfy the requirements of the Due Process Clause.

As adequate notice lies at the heart of due process, Cosby v. Ward, 843 F.2d 967, 982 (7th Cir. 1988), the Court will require that another notice be sent to all unlicensed relative foster homes via first class mail. The notice should include an application for a foster care license[18] and an explanation of how to contact a DCFS field staff member or private agency case worker as well as the DCFS Ombuds' toll free hotline for assistance.

In order that relative foster caregivers have a reasonable time to prepare and file the application, the Court has determined that the deadline be 35 days from the date of mailing the notice and application. The Court requires that a caseworker be available to answer questions for caregivers who have questions. Furthermore, the Court requires that DCFS continue to provide the assistance of the Ombuds, mentioned in paragraph 80 of Defendant's Proposed Findings. If a relative caregiver fails to comply with the deadline for application, benefits may be reduced as envisioned in HMR Reform. If the applicant meets the deadline, benefits must continue at the full foster care rate until DCFS processes the application and renders a decision. If the application is denied, DCFS must clearly state the reasons for the denial. Of course, the licensure applications must be judged on the same basis as licensure applications received from

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[18] Each notice must include an application for a license, regardless of the current status of the relative foster home. This requirement represents a change from DCFS's practice to date, under which applications were sent only to those homes that were already approved.

non-relative caregivers in order to comply with the 1976 Judgment Order.

This relief places appropriate incentives on both the applicants and DCFS. The applicants are required to quickly comply with the portion of the licensing procedure that is within their control as they must submit an application for licensure within a reasonable specified time of delivery of the final notice. The applicants will not, however, be in jeopardy of losing their benefits based on DCFS's inability to process applications promptly. DCFS will be able to reduce the financial burden on itself by quickly determining which licensing applications are granted and which are denied. The Court believes that these incentives are far more sensible than those created by the HMR Reform transition, where applicants were helpless to speed their application along and DCFS could save very substantial amounts of money during the time the applications are pending.

In addition to properly coordinating the relative incentives, the relief structured by the Court is also fair. Relative foster caregivers will have a reasonable opportunity to present their claim for continued benefits so that they would be treated the same as non-relative foster caregivers.[19] On the other hand,

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[19] This opportunity is especially important because many relative foster care providers rely on full foster care payments to maintain their housing and the standard of living provided to the foster children. Plaintiffs provided the uncontested testimony of ten foster caregivers, each of whom described the impact a reduction in benefits would have upon the foster children and the foster care families. Each caregiver witness, as well as Plaintiffs' expert

(continued...)

the intrusion into the State's system of foster care is minimal. The Court does not interfere in any way with the State's ability to have the HMR Reform take effect on July 1, 1995, including changes in the definition of "neglect," the elimination of "non-removal" placements, increased licensure requirements such as six hours of training and a medical check, and many other changes. The Court emphasizes that none of the relief specified in this opinion applies to new participants in the DCFS system. Relief applies only to unlicensed caregivers who received full foster care benefits under the pre-HMR Reform system. The relief provided here is the minimum necessary to satisfy due process and the Judgment Order. DCFS, by granting unlicensed homes foster care benefits under the pre-HMR Reform system, voluntarily shouldered the burden of procedural fairness with respect to those caregivers and now must honor that responsibility. Because the restriction the Court places on the State's ability to implement HMR Reform is limited to the financial effect on unlicensed relative caregivers and will last only as long as it takes DCFS to process pending applications for licensure, the cost to the State will be substantially less than estimated. In any event, the extent of the expense is placed within the control of DCFS.

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[19](...continued)
witnesses, testified that a drop in payments would result in harm to the foster children affected. See, e.g., Gleesson Direct, pp. 9, 15, 20; Grimes Direct, p. 27; Campbell Direct, p. 5; Collins Direct, p. 5; Sumner Direct, p. 5.

The Court directs Plaintiffs to submit, as they have volunteered to do, a draft decree reflecting the decisions set forth herein by July 7, 1995. Defendant may also submit a draft decree and/or objections to the form of the decree by July 11. The Court sets a hearing and ruling date of July 12, 1995 at 4:00 p.m.

In this case, there are at least one state court decree and two federal court decrees that impact on the HMR Reform implementation. Through this proceeding, the Court has been made aware of the administrative problems that are created by long-standing, unending court decrees. When the transition period to HMR Reform has been completed, the Court would entertain further proceedings on what portion, if any, of the 1976 decree should remain in effect and for what period of time.

CONCLUSION

For the reasons given in this opinion, Plaintiff's Motion to Adjudicate Director McDonald in Civil Contempt is DENIED. Plaintiffs' Motion for Supplemental Relief is GRANTED. All other motions made in the course of this litigation are DENIED.

ENTER:

/s/ John A. Nordberg
JOHN A. NORDBERG
United States District Judge

DATED: June 30, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCEL YOUAKIM, et al.,	]	
	]	
Plaintiffs,	]	
	]	
v.	]	No. 73 C 635
	]	
	]	Judge John A. Nordberg
JESS MCDONALD, DIRECTOR, ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES,	]	
	]	
Defendant.	]	

ORDER

The Court hereby enjoins Director McDonald and DCFS from terminating, suspending, or reducing foster care payments to relative foster children currently receiving them until defendants have complied with the instructions of the Court detailed in a Memorandum Opinion and Order issued today.

The Court hereby enjoins Director McDonald and the Illinois Department of Children and Family Services from terminating, suspending, or (under the HMR Reform Plan) reducing foster care payments to all relative foster children currently receiving foster care payments until defendants give those children and

their relative foster parents an opportunity to have any application for licensure determined on its merits. All relatives who have not yet submitted an application shall have a reasonable time to prepare and file the application, the Court has determined that the deadline be 35 days from the date of mailing the notice and application. The Court requires that a caseworker be available to answer questions for caregivers who have questions. Furthermore, the Court requires that DCFS continue to provide the assistance of the Ombuds, mentioned in paragraph 80 of Defendants' Proposed Findings. If a relative caregiver fails to comply with the deadline for application, benefits may be reduced as envisioned in HMR Reform. If the applicant meets the deadline, benefits must continue to the full foster care rate until DCFS processes the application and renders a decision. If the application is denied, DCFS must clearly state the reasons for the denial. Of course, the licensure applications must be judged on the same basis as licensure applications received from non-relative caregivers in order to comply with the 1976 Judgment Order.

The Court directs Plaintiffs to submit, as they have volunteered to do, a draft decree reflecting the decisions set forth herein by July 7, 1995. Defendant may also submit a draft decree and/or objections to the form of the decree by July 11. The Court sets a hearing and ruling date of July 12, 1995 at 4:00 p.m.

6/30/95

/s/ John A. Nordberg
Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARCEL YOUAKIM and LINDA YOUAKIM, et al.,	]	
Plaintiffs,	]	
v.	]	No. 73 C 635
JEROME MILLER, et al.,	]	
Defendant.	]	

JUDGMENT AND ORDER

This matter coming on to be heard pursuant to the Memorandum Decision and Judgment of the Three Judge District Court, 374 F. Supp. 1204 (N.D. Ill. 1974), the judgment of the United States Supreme Court vacating the prior three-judge court judgment and remanding, ___ U.S. ___, 96 S. Ct. 1399 (1976), and this Court's Memorandum Opinion and order dated July 27, 1976, and the Court having determined that the several provisions of this Decree are necessary to afford the plaintiffs and members of the plaintiff class the full equitable relief to which they are entitled:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Ill. Rev. Stat. ch. 23 § § 2212.05, 2212.17 and implementing policies and procedures of the Illinois Department of Children and Family Services ("DCFS") are contrary to 42 U.S.C. § § 601 and 608, implementing federal regulations, and Department of Health, Education and Welfare Program Instruction API-P1-75-9 and are therefore invalid under the Supremacy Clause of the United States Constitution, Article VI. cl. 2 insofar as they exclude from eligibility, or deny full Aid to Families with Dependant Children-Foster Care payments (hereinafter, "full AFDC-F payments") under 42 U.S.C. § 608, or ancillary public assistance benefits and services under Titles IV, XIX, and XX of the Social Security Act and the Food Stamp Act of 1964 (hereinafter "ancillary benefits"), to:

(a) dependant foster children otherwise eligible for these full AFDC-F payments and ancillary benefits, because such children live in foster family homes or child care institutions (hereinafter, "foster homes") maintained by foster parents or other persons (hereinafter, "foster parents") who are related to them;

(b) foster parents otherwise eligible for these full AFDC-F payments and ancillary benefits, because such parents maintain foster homes for foster children related to them.

2. 42 U.S.C. §§601 and 608 require that whenever a child has been or is removed from the home of a relative specified in 42 U.S.C. §606(a) as the result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child and his placement and care are the responsibility of defendants, and such child is placed by defendants in a licensed or approved foster home maintained by relatives of the child, such child and those relatives shall be eligible for full AFDC-F payments and ancillary benefits to the same extent as a child placed in a foster home maintained by foster parents not related to the child, and such parents.

3. The plaintiff class in this case, pursuant to F.R.C.P. 23(a) and (b)(2) consists of:

(a) all persons eligible for AFDC-F payments and ancillary benefits, but who have been or are being denied such payments or benefits, in whole or in part, by defendants because they maintain foster homes for wards of the state (foster children) related to them.

(b) all wards of the state (foster children) eligible for AFDC-F payments and ancillary benefits, who have been or are being denied such payments or benefits, in whole or in part, by defendants because they are living in foster homes maintained by foster parents related to them.

(c) all wards of the state (foster children) not living with their relatives because such relatives have

been unable to accept them as foster children without the full AFDC-F payments and ancillary benefits provided to foster families in which foster parents are unrelated to the foster children, and such relatives.

4. Defendants, their agents, employees and all other persons in active concert with them are enjoined from:

(a) enforcing Ill. Rev. Stat. ch. 23, §§2212.05, 2212.17, and 5005, and all implementing administrative policies and procedures, insofar as they exclude from eligibility, or deny full AFDC-F payments or ancillary benefits to, foster children living in foster homes maintained by related foster parents, and to these related foster parents, when such children and such parents are otherwise eligible for such payments and benefits;

(b) failing to pay full AFDC-F payments to foster children living in foster homes maintained by related foster parents, and to these related foster parents, when such children and parents are otherwise eligible for such payments;

(c) failing to provide, or assist in providing, ancillary benefits to foster children living in foster homes maintained by related foster parents, and to these related foster parents, when such children and parents are otherwise eligible for such payments (to the same extent as defendants provide, or

assist in providing, benefits to foster children living in foster homes maintained by unrelated foster parents, and to these unrelated foster parents).

5. Defendants shall make the first cash payment of full AFDC-F payments on or before October 1, 1976, to foster parents who currently have related foster children living with them. Such first payment shall be for the period July 27, 1976, to October 1, 1976, and for each such foster parent so paid such first payment, shall not be less (when added to other Aid to Families with Dependant Children payment for this period) than the amount of AFDC-F payments which would have been paid to each such parent had each been maintaining a foster home for unrelated foster children for this period.

6. On or before October 1, 1976, defendants shall, by the notice attached hereto as Exhibit A, inform all foster parents with whom related foster children are currently living, of the provisions of this Order, of their eligibility for full AFDC-F payments and ancillary benefits, and of the reason for the issuance of the first benefit payment described in paragraph 5.

7. Within forty (40) days from the date of the entry of this Order, defendants shall submit to the Court, for approval, policies and procedures issued pursuant to and to implement this Order, amending existing provisions insofar as existing policies and procedures presently exclude from eligibility or deny full AFDC-F foster care payments and ancillary benefits to otherwise eligible foster children and foster parents related

to them, because such foster children are living in foster homes maintained by such foster parents, and/or which are otherwise inconsistent with or frustrate the statutory policy of Title IV of the Social Security Act, 42 U.S.C. §601 et seq., favoring placement of such foster children in the homes of relatives. The policies and procedures which shall be modified and amended include, but are not limited to:

(a) DCFS regulations, including Regulation No. 5.12 (Minimum Standards for Licenced Foster Family Homes);

(b) DCFS Policies and Procedures Manual provisions, including Policy and Procedure §§2.14 (Principles and Policies for Child Placement), 2.16 (Essential Elements in Foster Care), 2.1.12 (Selection of Foster Care Resource), 2.21 (Utilization of Foster Family Homes - Definition);

(c) Placement Agreement Forms utilized in foster care placement;

(d) Purchase of Service Agreements, data record policies, memoranda, staff instructions, forms, computer programs, and other policies and procedures, if change therein is necessary to fully comply with and effectuate any provision of this Order.

Not less than ten (10) days prior to the date defendants submit to the Court for approval such policies and procedures, defendants shall serve upon the attorneys for plaintiffs a copy

of said policies and procedures. After the Court approves such policies and procedures, including the amendments to existing provisions, defendants shall cause such policies and procedures to be promptly promulgated and effectuated.

8. Defendants shall take all necessary action, including but not limited to that described in subparagraphs (a), (b), and (c) hereof, to identify relatives capable of providing foster homes for defendants' wards currently residing in child care institutions or foster family homes maintained by unrelated persons. In any case where such a relative is willing to provide a foster home for the related child, placement and/or transfer decisions for the related foster child shall continue to be made under defendants' policies and procedures, as amended pursuant to this Order, and in the best interests of the child, but with due regard to the statutory policy, 42 U.S.C. §601 et seq., favoring placement of such a child in the home of a relative.

(a) For foster children not currently residing with relatives, defendants shall identify relatives from defendants' case files (and in the absence of sufficient information in the case files, by questioning the foster children and the relatives from whose home the child was removed). Defendants shall send to all such identified relatives the notice attached hereto as Exhibit B, by November 15, 1976.

(b) Whenever defendants shall receive a response from such relatives indicating that they are or may be willing to provide foster homes for foster

children related to them, defendants shall take all action necessary to approve or disapprove the relatives' home and arrange placement or transfer, when appropriate, within two months after receiving such a response.

(c) Relatives who request that, and/or apply to have their home licensed or approved as a foster home, or who request and/or apply for the placement or transfer of a related foster child in or to their home, shall have the rights of hearing and appeal provided pursuant to DCFS Regulation Nos. 2.18 and 5.02 in any case in which such requests or applications are denied or not acted upon promptly. In any case in which such an application or request is denied, the relative shall be entitled, when the denial is made, to notice of the reasons for such denial, and the reasons for such denial shall also be entered in the foster child's case record.

9. Defendants shall henceforth consider all placements and transfers of foster children and make all regular periodic evaluations of existing placements of foster children under defendants' policy and procedures, as amended pursuant to this Order, and in the best interests of the child, but with due regard to the statutory policy, 42 U.S.C. §601 et seq., favoring placement of such a child in the home of relatives.

10. Within ten (10) days from the entry of this Order, defendants shall cause to be directed to each DCFS administrator,

caseworker, and other employee having responsibilities related to the AFDC-F program, a copy of this Order together with a notice stating that all DCFS policies and procedures inconsistent therewith are null, void, and of no further effect.

11. Defendants shall furnish to the Court and to plaintiffs' attorneys a report on or before November 1, 1976, attesting to the accomplishment of the provisions of paragraphs 4-7, 9 and 10 of this Order, and shall file on or before February 1, 1977, a report attesting to the accomplishment of the provisions of paragraph 8 of this Order.

12. This Court shall retain continuing jurisdiction over this action.

ENTER:

/s/ Alfred Y. Kirkland
ALFRED Y. KIRKLAND
Judge, United States District Court

Dated: August 24, 1976